

# **Alabama Firefighter's Personnel Standards Education Commission**

## **State Codes for the Fire and Emergency Services**

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**Persons rendering emergency care etc., at scene of accident, etc.**

(a) When any doctor of medicine or dentistry, nurse, member of any organized rescue squad, member of any police or fire department, member of any organized volunteer fire department, Alabama-licensed emergency medical technician, intern, or resident practicing in an Alabama hospital with training programs approved by the American Medical Association, Alabama state trooper, medical aidman functioning as a part of the military assistance to safety and traffic program, chiropractor, or public education employee gratuitously and in good faith, renders first aid or emergency care at the scene of an accident, casualty, or disaster to a person injured therein, he or she shall not be liable for any civil damages as a result of his or her acts or omissions in rendering first aid or emergency care, nor shall he or she be liable for any civil damages as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

(b) Any member of the crew of a helicopter which is used in the performance of military assistance to safety and traffic programs and is engaged in the performance of emergency medical service acts shall be exempt from personal liability for any property damages caused by helicopter downwash or by persons disembarking from the helicopter.

(c) When any physician gratuitously advises medical personnel at the scene of an emergency episode by direct voice contact, to render medical assistance based upon information received by voice or biotelemetry equipment, the actions ordered taken by the physician to sustain life or reduce disability shall not be considered liable when the actions are within the established medical procedures.

(d) Any person who is qualified by a federal or state agency to perform mine rescue planning and recovery operations, including mine rescue instructors and mine rescue team members, and any person designated by an operator furnishing a mine rescue team to supervise, assist in planning or provide service thereto, who, in good faith, performs or fails to perform any act or service in connection with mine rescue planning and recovery operations shall not be liable for any civil damages as a result of any acts or omissions. Nothing contained in this subsection shall be construed to exempt from liability any person responsible for an overall mine rescue operation, including an operator of an affected facility and any person assuming responsibility therefor under federal or state statutes or regulations.

(e) A person or entity, who in good faith and without compensation renders emergency care or treatment to a person suffering or appearing to suffer from cardiac arrest, which may include the use of an automated external defibrillator, shall be immune from civil liability for any personal injury as a result of care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary prudent person would have acted under the same or similar circumstances, except damages that may result from the gross negligence of the person rendering emergency care. This immunity shall extend to the licensed physician or medical authority who is involved in automated external defibrillator site placement, the person who provides training in CPR and the use of the automated external defibrillator, and the person or entity responsible for the site where the automated external defibrillator is located. This subsection specifically excludes from the provision of immunity any designers, manufacturers, or sellers of automated external defibrillators for any claims that may be brought against such entities based upon current Alabama law.



(f) Any licensed engineer, licensed architect, licensed surveyor, licensed contractor, licensed subcontractor, or other individual working under the direct supervision of the licensed individual who participates in emergency response activities under the direction of, or in connection with, a community emergency response team, county emergency management agency, the state emergency management agency, or the Federal Emergency Management Agency shall not be liable for any civil damages as a result of any acts, services, or omissions provided without compensation, in such capacity if the individual acts as a reasonably prudent person would have acted under the same or similar circumstances. The immunity provided in this subsection shall apply to any acts, services, or omissions provided within 90 days after declaration of the emergency.

(g) Any person, who, in good faith, renders emergency care at the scene of an accident or emergency to the victim or victims thereof without making any charge of goods or services therefor shall not be liable for any civil damages as a result of any act or omission by the person in rendering emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person if the individual acts as a reasonably prudent person would have acted under the same or similar circumstances.

*(Acts 1966, Ex. Sess., No. 253, p. 377; Acts 1975, No. 1233, p. 2594; Acts 1981, No. 81-804, p. 1427; Acts 1987, No. 87-390, p. 558, §1; Acts 1993, No. 93-373, §1; Act 99-370, p. 595, §3; Act 2006-104, p. 134, §1; Act 2011-579, p. 1253, §1.)*

#### **Section 8-13-1**

#### **Definitions.**

Unless otherwise provided, the following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section:

(1) **APPLICANT.** Any person applying for a license under this chapter, including the principal, if such person is the agent of another who is the true owner, notwithstanding whether that other is an individual, partnership, association, firm, or corporation and notwithstanding whether the name of the true owner appears on the application or not.

(2) **DISTRESS MERCHANDISE SALE.** Any offer to sell to the public or a sale to the public of goods, wares, or merchandise on the implied or direct representation that such sale is being held other than in the ordinary course of business and not otherwise defined herein. Without limiting the generality of the above, "distress merchandise sales" shall include, but not be limited to, any sale advertised either specifically or in substance to be any one of the following:

- a. Fire sale;
- b. Smoke and/or water damage sale;
- c. Adjustment sale;
- d. Insurance salvage sale;
- e. Mortgage sale;

- f. Adjuster's sale;
- g. Reorganization sale; or
- h. Other terminology of similar intent to any of the above.

(3) GOING OUT OF BUSINESS SALE. Any offer to sell to the public or a sale to the public of goods, wares, or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business. Without limiting the generality of the above, "going out of business sales" shall include, but not be limited to, any sale advertised either specifically or in substance to be any one of the following:

- a. A sale because the applicant is going out of business;
- b. A sale because the applicant is liquidating;
- c. A sale because the applicant is selling 50 percent or more of his stock, his entire stock or selling out to the bare walls;
- d. A sale because the applicant has lost his lease;
- e. A sale because the applicant is selling out his interest in the business establishment;
- f. A sale because everything in the store or establishment must be sold;
- g. Trustee's sale;
- h. Bankrupt sale;
- i. Save us from bankruptcy sale;
- j. Insolvent sale;
- k. Assignee's sale;
- l. Must vacate sale;
- m. Quitting business sale;
- n. Receiver's sale;
- o. Loss of lease sale;
- p. Forced out of business sale;
- q. Removal sale;

- r. Liquidation sale;
  - s. Executor's sale;
  - t. Administrator's sale;
  - u. Warehouse removal sale;
  - v. Branch store discontinuance sale;
  - w. Creditor's committee sale;
  - x. Adjustment sale;
  - y. Defunct business sale;
  - z. Selling out interest sale; or
  - aa. Other terminology of similar intent to any of the above.
- (4) GOODS, WARES and MERCHANDISE. Any goods, wares, merchandise, or other property capable of being the object of a sale regulated under this chapter.
- (5) INVENTORY. A list of and the wholesale cost of goods, wares, and merchandise.
- (6) PERSON. Any individual, partnership, association, firm, or corporation.

*(Acts 1965, No. 553, p. 1027, §1.)*

#### **Section 8-13-2**

#### **License - Required; display on premises of sale; display of license number and date of issuance in advertising.**

- (a) It shall be unlawful for any person to sell, offer for sale, or advertise for sale at a going out of business sale or a distress merchandise sale any goods, wares, or merchandise, whether it be his property or that of another, unless a license for such sale has been issued pursuant to this chapter and is in effect.
- (b) Such license must be displayed in a prominent place on the premises wherein any such sale is being conducted, and the number and date of issue of the license must be displayed in any advertising of the sale.

*(Acts 1965, No. 553, p. 1027, §2.)*

#### **Section 8-13-3**

#### **License - Application.**

An applicant for a license to conduct a going out of business sale or a distress merchandise sale shall file an application with the judge of probate of the county in which such sale shall be held at least 30 days prior to such sale; provided, however, that the said 30-day period may be waived in writing by the probate judge to whom the application is made for good cause shown. The application shall be made upon forms prescribed by the Commissioner of Revenue of the State of Alabama, signed and verified by the applicant and shall include the following information:

- (1) Name and address of the applicant and also the name of the true owner if the applicant is not such true owner;
- (2) Name, location, and time of the proposed going out of business sale or distress merchandise sale;
- (3) Inventory of the goods, wares, or merchandise, on hand and on order, which the applicant intends to offer for sale at a going out of business sale or distress merchandise sale. The inventory shall show the quantity, kind, or grade of each item, the wholesale cost thereof, and the name of the supplier from whom each item was acquired;
- (4) A statement of the average, highest, and lowest inventory at the wholesale cost thereof at the applicant's place of business during the year next preceding the filing of the application. When the applicant operates more than one retail outlet and said outlets are supplied from a warehouse or warehouses operated by applicant, then the amount of inventory in said warehouse or warehouses attributable to the retail outlet wherein the sale hereunder is to be conducted shall be calculated as follows:
  - a. The total volume of merchandise handled in said warehouse or warehouses during the year next preceding the filing of the application under this chapter shall be determined;
  - b. The percentage of such year's total volume sold through the retail outlet wherein the sale hereunder is being conducted shall next be determined;
  - c. The percentage so determined of the merchandise on hand at said warehouse or warehouses at the time of the filing of the application hereunder shall be attributable to the concerned outlet and shall be included as part of the inventory set forth in the application;
- (5) A list of goods, wares, or merchandise received by the applicant during the three months next preceding the filing of the application;
- (6) A statement that the applicant will discontinue the business for which the license is requested, provided such sale is a going out of business sale, the date when such termination will be effected and that the applicant will not use or authorize the use of his trade, business, or firm name for a period of one year immediately following the expiration of a license issued to him under this chapter; provided, however, that if such name is being used in connection with another establishment operated by applicant presently located within the State of Alabama at a different location, then the trade, business, or firm name may be used at such other location, but not at the location where the sale is conducted and not at another location established by applicant after the application is made;
- (7) Such other information as the Commissioner of Revenue may prescribe.

*(Acts 1965, No. 553, p. 1027, §3.)*

#### **Section 8-13-4**

##### **License - Bond required of applicant.**

(a) Every applicant for a going out of business sale or distress merchandise sale license shall execute and file with the probate judge to whom the application is made a good and sufficient bond in the sum of \$2,500 or five percent of the wholesale value of the inventory as set forth in the application, whichever is greater, with two or more sureties thereon, approved by said probate judge or with the surety thereon a surety company authorized to do business in the State of Alabama, which bond in any event shall be approved by said probate judge, payable to the State of Alabama, and shall be conditioned upon faithful observance of all the conditions of this chapter and shall also indemnify any purchaser at such sale who suffers any loss by reason of misrepresentation in said sale.

(b) Such bond shall continue in effect for one year after the termination of the sale for which it is made.

(c) The licensee shall notify the probate judge issuing the license of any action filed as a result of the operation hereby licensed. Any purchaser claiming to have been damaged by misrepresentation in such going out of business sale or distress merchandise sale may maintain an action against the licensee making such misrepresentations and may join as party defendant the surety or sureties on the bond.

(d) If an action is filed by any purchaser or purchasers at a licensed sale within one year after the termination of the sale, the bond shall remain in force and effect until all actions are concluded and the judgment or judgments, if any, paid in full.

(e) In the event the applicant fails to observe all of the provisions of this chapter in conducting such sale for which the bond is given, the bond will be deemed to be forfeited, and any district attorney of the State of Alabama may recover in an action in the circuit court of the county in which the bond was given the amount of the bond from applicant and his sureties for the use and benefit of the State of Alabama.

*(Acts 1965, No. 553, p. 1027, §4.)*

#### **Section 8-13-5**

##### **License - Public hearing on application.**

The probate judge to whom the application for a going out of business sale or distress merchandise sale license is made, or his designee, shall conduct a public hearing not later than two weeks after an application has been filed. At least one week prior to such hearing the probate judge shall publish, at the expense of the applicant, a notice of the hearing in a local newspaper of general circulation. The probate judge may require that a record be made of the public hearing and that the testimony at such hearing be under oath.

*(Acts 1965, No. 553, p. 1027, §6.)*

#### **Section 8-13-6**

**License - Investigation; investigation fee; cost of independent audit; applicant's refusal to pay investigation fee and costs.**

(a) When an application for a license to conduct a going out of business sale or distress merchandise sale is filed, the probate judge to whom the application is made shall make such investigation as he deems necessary prior to the public hearing hereinafter provided.

(b) The applicant shall pay to such probate judge at the time the application is filed a fee of \$10 for making such an investigation, and if such probate judge deems it necessary to have an independent inventory or audit of the applicant's books made, he shall advise the applicant of the cost of such independent inventory or audit and applicant shall pay such amount to such probate judge to be used by him to pay the cost of such inventory and/or audit.

(c) The applicant's refusal to pay the fee and costs hereinabove provided and his refusal to permit examination of his books and records or his goods, wares and merchandise is ground for refusal by such probate judge to issue a license.

*(Acts 1965, No. 553, p. 1027, §5.)*

**Section 8-13-7**

**License - License issued only to bona fide merchant.**

No license for a going out of business sale or a distress merchandise sale shall be issued except to a bona fide licensed merchant of the State of Alabama, and no such license shall be granted to an applicant who sets up an establishment or who acquires an interest in an establishment solely or principally for the purpose of conducting a going out of business sale or distress merchandise sale.

*(Acts 1965, No. 553, p. 1027, §10.)*

**Section 8-13-8**

**License - Fee generally; renewal fee; issuing fee; costs of investigation and public hearing.**

(a) For a license for a going out of business sale or distress merchandise sale issued for 30 days or less, the applicant shall pay to the probate judge issuing the same, for the use and benefit of the State of Alabama, a license fee in accordance with the following schedule:

- (1) \$50 if inventory is \$10,000 or less.
- (2) \$100 if inventory is over \$10,000 but less than \$25,000.
- (3) \$200 if inventory is over \$25,000 but less than \$50,000.
- (4) \$300 if inventory is over \$50,000 but not over \$100,000.
- (5) \$400 if inventory is over \$100,000 but not over \$200,000.



(6) \$500 if inventory is over \$200,000.

(b) For a license renewal of 30 days or less, the applicant shall pay an additional license fee of \$100.

(c) The applicant shall also pay to the probate judge issuing the license an issuing fee of \$25 for each license issued hereunder, and for each renewal of such license, if any, and for all costs of investigation and public hearing.

*(Acts 1965, No. 553, p. 1027, §14.)*

#### **Section 8-13-9**

##### **License - When probate judge to issue license.**

A license shall be issued to an applicant when the probate judge to whom the application for a going out of business sale or distress merchandise sale is made is satisfied after investigation and public hearing that:

(1) The applicant intends to discontinue his business at the location designated in the application on the date specified therein if such sale is a going out of business sale;

(2) The applicant's inventory, on hand and on order, is not out of proportion to the stock normally carried by such applicant;

(3) The applicant has not purchased or otherwise acquired goods, wares, or merchandise for the purpose of conducting a going out of business sale or distress merchandise sale;

(4) The goods, wares, or merchandise to be offered for sale are those of a bona fide merchant of the State of Alabama;

(5) No misrepresentation of the goods to be sold has been made or will be practiced; and

(6) The applicant has complied with the provisions of this chapter in all other respects not specifically set forth in this section.

*(Acts 1965, No. 553, p. 1027, §12.)*

#### **Section 8-13-10**

##### **License - Restrictions on issuance.**

No license shall, under any circumstances, be granted to any persons, applicant, or owner within a period of two years after the termination of any going out of business sale by such person, applicant, or owner, held or conducted under this chapter. No person, applicant, or owner who has been convicted of violating any of the provisions of this chapter relating to the conduct of going out of business sales or distress merchandise sales shall be granted a license for such sale or sales or be employed, in any manner at or in connection with any going out of business sale or distress merchandise sale licensed hereunder for a period of 10 years after such conviction.

*(Acts 1965, No. 553, p. 1027, §11.)*

#### **Section 8-13-11**

##### **License - Surrender of business licenses.**

At the time a license is issued hereunder for a going out of business sale, the applicant shall surrender to the probate judge issuing the same all licenses held by him at that time for the regular operation of his business at the location where such sale is to be held, and the same shall no longer be of force and effect.

*(Acts 1965, No. 553, p. 1027, §13.)*

#### **Section 8-13-12**

##### **License - Duration of license; sale prohibited between November 15 and December 31; extension of license.**

A license for a going out of business sale or distress merchandise sale shall be limited to a period of 30 consecutive business days, exclusive of Sundays and legal holidays. No license shall be issued for a period that will include any of the days between November 15 through December 31, inclusive, and no going out of business sale or distress merchandise sale may be conducted during that period. If a licensee does not sell the quantity of goods, wares, or merchandise permitted under this chapter, he may apply for, and the probate judge may grant an extension of 30 days upon good cause shown.

*(Acts 1965, No. 553, p. 1027, §7.)*

#### **Section 8-13-13**

##### **License - Revocation or suspension.**

The probate judge issuing a license for a going out of business sale or distress merchandise sale may revoke or suspend the same if any licensee sells, offers for sale, or advertises for sale any goods, wares, or merchandise in addition to those specified under Section 8-13-17, violates any of the provisions of this chapter or any other law relating to the business so licensed or otherwise fails to comply with the terms of this chapter.

*(Acts 1965, No. 553, p. 1027, §21.)*

#### **Section 8-13-14**

##### **Use of trade, business or firm name of licensee after issuance of license.**

It shall be unlawful for any person to use the trade, business, or firm name of a licensee for a period of one year after the expiration of a license issued under this chapter, if such license is issued for a going out of business sale; provided, however, that an applicant may continue the use of such name at a different location if it has been, and is at the time the application is filed, being used at a different location within the State of Alabama by applicant.

*(Acts 1965, No. 553, p. 1027, §8.)*

#### **Section 8-13-15**

##### **Sales to be held only at regular store hours; exceptions.**

No going out of business sale or distress merchandise sale shall be held at times other than regular store hours of the applicant, except that the probate judge issuing the license may make reasonable provision for extra evening hours upon good cause shown by the applicant.

*(Acts 1965, No. 553, p. 1027, §9.)*

#### **Section 8-13-16**

##### **Advertising.**

A licensee shall not advertise a going out of business sale or distress merchandise sale earlier than seven days prior to the date on which the sale is licensed to begin. Advertising of such sales shall state the number of the license issued pursuant to this chapter and the date when the sale is to begin and, during the last 15 days of such sale, shall clearly and prominently state the date upon which the sale shall end.

*(Acts 1965, No. 553, p. 1027, §15.)*

#### **Section 8-13-17**

##### **Sale limited to inventoried stock; additions to inventory.**

(a) During any going out of business sale or distress merchandise sale, it shall be unlawful for a licensee to sell, offer for sale, or advertise for sale any goods, wares, or merchandise which were not included in the inventory filed with his application or added to his stock as permitted in this section.

(b) During any licensed going out of business sale or distress merchandise sale, no additions shall be made to the stock of merchandise set forth in the inventory attached to the application for the license; provided, however, that the applicant may add new stock not to exceed 10 percent of the dollar value of the inventory of goods, wares, or merchandise on hand as shown in the inventory attached to the application filed pursuant to this chapter; and provided further, that the addition of 10 percent shall include the goods, wares, or merchandise on order as shown in the application. The purpose of said additions to inventory shall be only to maintain reasonably balanced selections.

*(Acts 1965, No. 553, p. 1027, §16.)*

### **Section 8-13-18**

#### **Daily report of merchandise received; failure to report ground for license revocation.**

A licensee in a going out of business sale or distress merchandise sale shall file with the probate judge issuing the license a daily report under oath of merchandise received. The report shall show the quantity, kind, and grade of each item received, the supplier of each item, and the wholesale value thereof. Failure to report any receipt of goods while a license is in force is ground for revocation of the license, in the discretion of the probate judge issuing the same.

*(Acts 1965, No. 553, p. 1027, §17.)*

### **Section 8-13-20**

#### **False bidders, etc., prohibited.**

No person who is not a bona fide potential purchaser shall act at any going out of business sale or distress merchandise sale as bidder, or what is commonly known as a "capper," "booster," or "shiller," or offer or make any false bid to buy any article sold or offered for sale at any going out of business sale or distress merchandise sale.

*(Acts 1965, No. 553, p. 1027, §19.)*

### **Section 8-13-21**

#### **Licensee to be in continuous attendance at sale; licensee responsible for violations of chapter.**

The person to whom a license has been granted under this chapter, or his authorized representative, shall remain in continuous attendance at all times while a going out of business sale or distress merchandise sale is being conducted, and he shall be responsible for any violation of the provisions of this chapter.

*(Acts 1965, No. 553, p. 1027, §20.)*

### **Section 8-13-22**

#### **Penalties for violation of chapter; each sale, etc., constitutes separate offense.**

(a) A person convicted of a willful violation of any of the provisions of this chapter shall be fined not more than \$100 and may be imprisoned for not more than six months, or both.

(b) Each separate sale, offering for sale, or advertising for sale at a going out of business sale or distress merchandise sale of any goods, wares, or merchandise in violation of the provisions of this chapter constitutes a separate offense.

*(Acts 1965, No. 553, p. 1027, §23.)*

### **Section 8-13-23**

#### **Chapter not applicable to certain sales.**

In the following cases the provisions of this chapter shall not apply:

- (1) Sales for the estate of a decedent by the personal representative, or his agent, according to law or by the provisions of the will.
- (2) Sales of property conveyed by deed of trust, mortgage, or judgment or ordered to be sold according to the mortgage, judgment, or order.
- (3) Sales of all agricultural produce and livestock arising from the labor of the seller or other labor under his control on or belonging to his real or personal estate and not purchased or sold for speculation.
- (4) All sales under legal process.
- (5) Sales by a licensed pawnbroker or loan company which is selling or offering for sale unredeemed pledges of chattels as provided by law.
- (6) Sales made within the incorporated limits or police jurisdiction of any municipality of the State of Alabama under a license granted by such municipality pursuant to the provisions of a valid ordinance of such municipality similar to the provisions of this chapter.
- (7) Sales of automobiles by an auctioneer licensed under the laws of the State of Alabama.
- (8) Sales of fire, smoke, or water damaged merchandise by a licensed business establishment continuing in business. Such sales shall be limited to 12 regular business days.
- (9) Sales of perishable merchandise by a licensed business establishment continuing in business. Such sales shall be limited to seven regular business days.

*(Acts 1965, No. 553, p. 1027, §24.)*

### **Section 8-17-210**

#### **Definitions.**

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless clearly indicated otherwise:

(1) **DISTRIBUTOR.** Any person engaged in the business of making sales of fireworks for resale to all holders of the required Alabama permits who in turn shall resell to any permit holder; or any person who receives, brings, or imports any fireworks of any kind into the State of Alabama, except to a holder of an Alabama manufacturer's or distributor's permit.

(2) **D.O.T. CLASS C COMMON FIREWORKS.** All articles of fireworks as are now or hereafter classified as D.O.T. Class C common fireworks in the regulations of the U.S. Department of Transportation for the transportation of explosive and other dangerous articles.

(3) **MANUFACTURER.** Any person engaged in the making, manufacture, or construction of fireworks of any kind within the State of Alabama.

(4) **PERMIT.** The written authority of the State Fire Marshal issued under the authority of this article.

(5) **PERSON.** Includes any corporation, association, copartnership or one or more individuals.

(6) **RETAILER.** Any person engaged in the business of making sales of fireworks to consumers within the State of Alabama during a calendar year from January 1 through December 31.

(7) **SALE.** An exchange of articles or fireworks for money, including barter, exchange, gift, or offer thereof, and each such transaction made by any person, whether as principal proprietor, salesman, agent, association, copartnership, or one or more individuals.

(8) **FIREWORKS SEASONS.** The dates of June 20 through July 10 and December 15 through January 2 of each year shall be the only periods when seasonal retailers may sell fireworks.

(9) **SEASONAL RETAILER.** Any person engaged in the business of making sales of fireworks to consumers within the State of Alabama during the fireworks season(s) only, from permanent buildings or temporary or moveable stands.

(10) **SPECIAL FIREWORKS.** All articles of fireworks that are classified as Class B explosives in the regulations of the U.S. Department of Transportation, including all articles classified as fireworks other than those classified as Class C.

(11) **WHOLESALE.** Any person engaged in the business of making sales of fireworks to any other person engaged in the business of making sales at seasonal retail.

*(Acts 1981, No. 81-409, p. 638, §1; Acts 1987, No. 87-563, p. 876, §1.)*

#### **Section 8-17-211**

**Permit for manufacture, sale, etc., of fireworks or pyrotechnics for use before a proximate audience; record of sales; enforcement.**



(a) It shall be unlawful for any person to manufacture, sell, offer for sale, or ship or cause to be shipped into or within the State of Alabama, except as herein provided, any item of fireworks or pyrotechnics for use before a proximate audience, without first having secured the required applicable permit, as a manufacturer, distributor, wholesaler, retailer, or seasonal retailer, from the State Fire Marshal.

Possession of a permit is a condition prerequisite to manufacturing, selling, or offering for sale, or shipping or causing to be shipped any fireworks or pyrotechnics for use before a proximate audience into or within the State of Alabama, except as herein provided. This provision applies to nonresidents as well as residents of the State of Alabama. Mail orders where consumers purchase any fireworks or pyrotechnics for use before a proximate audience through the mail or receive any fireworks or pyrotechnics for use before a proximate audience in Alabama by mail, parcel service, or other carrier are prohibited. A sales clerk must be on duty to serve consumers at the time of purchase or delivery. All fireworks or pyrotechnics for use before a proximate audience sold and delivered to consumers within the State of Alabama must take place within the State of Alabama and be sold and delivered only by an individual, firm, partnership, or corporation holding the proper Alabama permit and all fireworks or pyrotechnics for use before a proximate audience coming into the state, manufactured, sold, or stored within the state shall be under the supervision of the State Fire Marshal as provided for in this article.

(b) Prior to engaging in the manufacture or sale within the State of Alabama, or shipment into the State of Alabama, of any fireworks or pyrotechnics for use before a proximate audience, each person making shipment or delivery or receiving any fireworks or pyrotechnics for use before a proximate audience into or within the State of Alabama, must make application on forms secured from the State Fire Marshal for a permit or permits required under this article for each location at which fireworks or pyrotechnics for use before a proximate audience are to be offered for sale.

(c) A manufacturer's permit issued under this article shall be subject to rules and regulations promulgated by the State Fire Marshal to govern the manufacture of fireworks or pyrotechnics for use before a proximate audience as in the judgment of the State Fire Marshal the public welfare may require.

(d) The decision of the State Fire Marshal as to what type of permit or permits shall be required of each person shall be final. The State Fire Marshal may deny a permit to an applicant or revoke a permit if the State Fire Marshal has knowledge or reason to believe the safety standards and conditions of this article are not or cannot be met by the applicant. No permit shall be issued to a person under the age of 18 years. All permits shall be for the calendar year or any fraction thereof and shall expire on December 31 of each year, two days of grace shall be allowed holders of permits after expiration thereof. Only one seasonal retailer permit shall be required for a full calendar year and it shall be valid for both fireworks seasons, provided that the building is not moved from the location where it was originally permitted and no substantial structural or environmental changes have occurred. A seasonal retailer permit may be issued after July tenth for the remaining fireworks season of that calendar year. All permits issued must be displayed in their place of business. No permit provided for herein shall be transferable nor shall a person be permitted to operate under a permit issued to any other person or under a permit issued for another location, unless transfer shall have been approved by the State Fire Marshal.

(e) The State Fire Marshal shall charge for permits issued as follows:

(1) Manufacturer, two thousand dollars (\$2,000).

(2) Distributor, two thousand dollars (\$2,000).

(3) Wholesaler, seven hundred dollars (\$700).

(4) Retailer, two hundred dollars (\$200).

(5) Seasonal Retailer, two hundred dollars (\$200).

(6) Seasonal Retailer after July 10, one hundred dollars (\$100).

(7) Display, fifty dollars (\$50).

(f) Only holders of a retailer or seasonal retailer permit may engage in the retail sale of permitted items as defined in Section 8-17-217, in any quantity, to consumers.

(g) A holder of a manufacturer's permit is not required to have any additional permit or permits in order to sell to distributors, wholesalers, retailers, or seasonal retailers.

(h) A record of all sales by manufacturers, distributors, or wholesalers must be kept showing the names and addresses of purchasers. All fees collected for the permits shall be paid into the Fire Marshal Revolving Fund for the enforcement of this article. The State Fire Marshal may designate a deputy fire marshal as the "fireworks enforcement officer" who shall have the responsibility of directing enforcement of the state fireworks laws.

(i) The State Fire Marshal is charged with the enforcement of this article and may call upon any state or county or city peace officer for assistance in the enforcement of this article. The fire marshal is not authorized to promulgate rules or regulations in conflict with or that go beyond the scope or intent of this article.

*(Acts 1981, No. 81-409, p. 638, §2; Acts 1987, No. 87-563, p. 876, §2; Act 2003-378, p. 1068, §1.)*

#### **Section 8-17-212**

##### **Assignment and utilization of permit numbers.**

The State Fire Marshal shall assign a number to each permit issued and each holder of a permit of any of the classes hereinabove provided shall imprint or affix the same to all purchase orders, delivery receipts, and invoices issued or used by each manufacturer, distributor, or wholesaler.

*(Acts 1981, No. 81-409, p. 638, §3.)*

#### **Section 8-17-213**

**Requirement that consignee produce permit, etc., prior to delivery, sale, etc., of fireworks; requirement that purchaser of fireworks obtain proof that seller possesses permit; keeping of records by permit holders.**

No person shall deliver, sell or ship fireworks into or within the State of Alabama unless the consignee produces the required permit or evidence that the consignee holds said permit. No person shall purchase fireworks from another person without first requiring proof that the proper permit required of the seller herein has been obtained and is current and valid. Each holder of a permit under the provisions of this article shall keep an accurate record of each shipment received. Each holder of a permit as distributor or wholesaler shall keep a record of each sale, delivery, or out shipment of fireworks. Such records shall be clear, legible, and accurate, showing the name and address of the seller or purchaser, item and quantity received or sold. Such records are to be kept at each place of business and shall be subject to examination by the State Fire Marshal or his deputies, who shall have the authority at any reasonable time to require any manufacturer, distributor, wholesaler, or retailer to produce records for the current year and the immediately preceding full calendar year.

*(Acts 1981, No. 81-409, p. 638, §4.)*

#### **Section 8-17-214**

##### **Revocation of permit for reasons of purchasing, receiving, etc., illegal fireworks; notice of revocation; refusal to issue new permit to holder whose permit is cancelled or revoked.**

(a) The State Fire Marshal may revoke any permit issued under the provisions of this article upon evidence that the holder has purchased, received, sold, used, shipped, or caused to be shipped any illegal fireworks in violation of this article. Notice must be given in writing to the holder of a permit stating cause of revocation; if the permit revoked is for a business located within Alabama, a copy of said notice of revocation must be supplied to the judge of probate of the county in which such permit holder's business is located.

(b) The State Fire Marshal, in his discretion, may refuse to issue another permit to the holder of a permit which has been cancelled or revoked for the possession or sale of illegal fireworks for a period not to exceed three years.

*(Acts 1981, No. 81-409, p. 638, §5.)*

#### **Section 8-17-215**

##### **Effect of article on state, county, and municipal license requirements; requirement of proof of current and valid sales tax number.**

The issuance of the permit herein required does not replace or relieve any person of state, county or municipal privilege licenses as now or hereafter provided by law. Before the issuance of any state and county licenses, the judge of probate shall require each applicant for a fireworks license to exhibit a permit or furnish other definite and satisfactory evidence that a proper permit has been issued to the applicant by the State Fire Marshal and that said permit is current and valid. No permit shall be issued to any applicant who does not show proof of a current and valid sales tax number.

**Section 8-17-216**

**Permits for sale, use, etc., of special fireworks for public displays.**

(a) Nothing in this article shall be construed as applying to the shipping, sale, possession, and use of special fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations governing this type of fireworks by the Alcohol, Tobacco, and Firearms division of the United States Treasury Department, and their requirements met and any permit or license required by them secured before application for a state display permit is made.

(b) Application for a state permit for public display of special fireworks must be made in writing to the State Fire Marshal at least 10 days before the display date. The State Fire Marshal may accept an application for a state permit for public display of special fireworks less than 10 days before the display date if accompanied by a fee of double the amount otherwise required. The application shall show that the proposed display is to be so located and supervised that it shall not be hazardous to property and that it shall not endanger human lives. If the display is to be performed within the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of such municipality. Permits issued shall be limited to the time specified therein and shall not be transferable.

(c) Possession and sale of special fireworks shall be limited to a holder of a federal license issued for display fireworks. Possession of special fireworks for resale to holders of a permit for public display shall be confined to holders of a distributor's permit only. Provided, however, a distributor's permit shall not be required where the special fireworks are for public display to be performed solely for The Alabama June Jam, Inc.; and provided further that the application for the state permit for public display shall show that the proposed display is to be performed solely for The Alabama June Jam, Inc.

(d) Nothing in this article shall apply to Class C firework displays.

*(Acts 1981, No. 81-409, p. 638, §7; Acts 1987, No*

**Section 8-17-216.1**

**Use of pyrotechnics before a proximate audience.**

(a) The use of pyrotechnics before a proximate audience shall comply with the requirements set out in the latest edition of the National Fire Protection Association's Standard for the Use of Pyrotechnics Before a Proximate Audience (NFPA 1126) as shall be adopted by the State Fire Marshal. For purposes of this article, the term "proximate audience" shall mean an indoor audience closer to pyrotechnic devices than permitted by the National Fire Protection Association's Code for Fireworks Display (NFPA 1123).

- (b) No person shall use pyrotechnics before a proximate audience without first obtaining a permit therefor from the State Fire Marshal. An application for a permit for the use of pyrotechnics at an event with a proximate audience shall be filed with the State Fire Marshal not less than 10 days prior to the planned date of the event. The State Fire Marshal may accept an application for a permit under this section less than 10 days before the planned date of the event if accompanied by a fee of double the amount otherwise required.
- (c) The request for a permit under subsection (b) shall be in the form and manner prescribed by the State Fire Marshal. The permit shall be in addition to any locally required permit or approval.
- (d) A fee of one hundred dollars (\$100) per event shall be submitted with each application.
- (e) Where more than one event is to take place at the same location during the same calendar date, a separate application shall be filed for each event. The application fee for the second and subsequent events on the same calendar date shall be fifty dollars (\$50) per event.
- (f) The State Fire Marshal may prescribe such other and additional requirements associated with the use of pyrotechnics before a proximate audience as are deemed necessary for the safety of property and persons present at the proximate event location.
- (g) All pyrotechnics found at an event with a proximate audience which does not have a permit shall be confiscated and destroyed by the State Fire Marshal or his or her designee.
- (h) All fees collected pursuant to this section shall be paid into the Fire Marshal Revolving Fund for the enforcement of this article.

*(Act 2003-378, p. 1068, §2.)*

#### **Section 8-17-217**

##### **Permissible items of fireworks.**

- (a) It shall be unlawful for an individual, firm, partnership, or corporation to possess, sell, or use within the State of Alabama, or ship into the State of Alabama, except as provided in Section 8-17-216, any pyrotechnics commonly known as "fireworks" other than items now or hereafter classified as Class C common fireworks by the United States Department of Transportation and/or those items that comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under their regulations.
- (b) Permitted items designed to produce an audible effect are confined to small ground items which include firecrackers containing not over 50 milligrams of explosive composition and aerial devices containing not over 130 milligrams of explosive composition. Propelling or expelling charge consisting of a mixture of charcoal, sulfur and potassium nitrate are not considered as designed to produce an audible effect.
- (c) Items permitted and for which a permit is required shall include related items not classified by the United States Department of Transportation as common fireworks, but identified under their regulations

as trick noisemakers, toy novelties, toy smoke devices and sparklers and shall include toy snakes, snappers, auto burglar alarms, smoke balls, smoke novelty items, and wire sparklers containing not over 100 grams of composition per item. Sparklers containing any chlorate or perchlorate salts may not exceed five grams of composition per item.

*(Acts 1981, No. 81-409, p. 638, §8; Acts 1987, No. 87-563, p. 876, §3.)*

#### **Section 8-17-218**

##### **Sale, use, etc., of special Class B commercial type ground salutes.**

All items of fireworks which exceed the two grain limit of D.O.T. Class C common fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale, and use within the State of Alabama for any purpose. This subsection shall not affect display fireworks authorized by this article,

*(Acts 1981, No. 81-409, p. 638, §9; Acts 1987, No. 87-563, p. 876, §4.)*

#### **Section 8-17-219**

##### **Conformance of permissible items to nomenclature of Section 8-17-217; identification marks on items.**

No permissible article of fireworks or related items defined in Section 8-17-217 shall be sold, offered for sale or possessed within the state or used within the state, except as provided in Section 8-17-216 unless it shall be properly named to conform to the nomenclature of Section 8-17-217. Items must be identified on the shipping cases and by imprinting on the article or retail sales container or unit "D.O.T. Class C Common Fireworks" or other appropriate classification or identification as may be applicable or required by any federal agency having jurisdiction over fireworks on related items; such imprint to be of sufficient size and so positioned as to be readily recognized by law enforcement authorities and the general public.

*(Acts 1981, No. 81-409, p. 638, §10.)*

#### **Section 8-17-220**

##### **Authorization for retail sales of permissible items of fireworks; items for which special fireworks permit at no time required.**

Permissible items of fireworks, defined in Section 8-17-217, may be sold at retail to residents of the State of Alabama. The term "fireworks" shall not include toy paper pistol caps which contain less than



twenty-five hundredths grains of explosive compounds, model rockets, emergency signal flares, matches, cone, bottle, tube, and other type serpentine pop-off novelties, trick matches and cigarette loads, the sale and use of which shall be permitted at all times without a special fireworks permit.

*(Acts 1981, No. 81-409, p. 638*

#### **Section 8-17-221**

**Requirements as to storage, display, etc., of fireworks; retail sales of fireworks from tents, motor vehicles, etc.; inspection by State Fire Marshal, etc., of premises where fireworks are to be stored or sold.**

(a) Placing, storing, locating, or displaying of fireworks in any window where the sun may shine through glass onto the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes within 10 feet of where the fireworks are offered for sale is hereby declared unlawful and prohibited. At all places where fireworks are stored or sold, there must be posted signs with the words "FIREWORKS - NO SMOKING" in letters not less than four inches high.

(b) No fireworks shall be sold at retail at any permanent location where paints, oils or varnishes are for sale or use unless kept in the original unbroken containers, nor where gasoline or other flammable liquid or gas is used, stored or sold, if the use, storage, or sale creates an undue hazard to person or property. No fireworks shall be sold at retail from any temporary or moveable stand where paints, oils, or varnishes are for sale or use unless kept in the original unbroken containers, nor within 50 feet of where gasoline or other flammable liquid or gas is used, stored or sold.

(c) Any fireworks devices that are readily accessible to handling by consumers or purchasers must have their fuses protected in such a manner as to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. Safety type thread wrapped and coated fuses shall be exempt from this provision.

(d) No retail permit shall be issued for the sale of fireworks at retail from tents or from or in a motor vehicle or from a trailer towed by a motor vehicle. A permit may be issued for the sale of fireworks from a modular or mobile building when the structure is eight feet or more in width and thirty-two feet or more in length, from which all wheels have been removed and the structure placed on a non-mobile foundation. No permit shall be issued to an applicant for a previously unpermitted location, until the premises where fireworks are to be stored or sold have been inspected by the State Fire Marshal or his designated representative and it shall have been determined that such building and facilities within the building and facilities for storage meet reasonable safety standards for the storage and sale of permissible fireworks. Inspection is not required for renewal of permits at the same location to be operated by the same owner unless there has occurred substantial structure or environmental changes.

*(Acts 1981, No. 81-409, p. 638, §12; Acts 1987, No. 87-563, p. 876. §5.)*

#### **Section 8-17-222**

**Sale, etc., of fireworks to persons under 16 or intoxicated or irresponsible persons; display of identification by persons purchasing fireworks; acts constituting unlawful explosion or ignition of fireworks.**

It shall be unlawful to offer for sale or to sell any fireworks to children under the age of 16 years unless accompanied by an adult or to any intoxicated or irresponsible person. Any person purchasing fireworks shall be required to show a valid driver's license or state approved identification card. It shall be unlawful to explode or ignite fireworks within 600 feet of any church, hospital, asylum, public school, any enclosed building, or within 200 feet of where fireworks are stored, sold, or offered for sale. No person shall ignite or discharge any permissible articles of fireworks within or throw the same from a motor vehicle while within nor shall any person place or throw any ignited article of fireworks into or at such a motor vehicle, or at or near any person or group of people.

*(Acts 1981, No. 81-409, p. 638, §13; Acts 1987, No. 87-563, p. 876, §6.)*

**Section 8-17-223**

**Applicability of article.**

Nothing in this article shall be construed as applying to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor as applying to the military or naval forces of the United States, or of this state or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, theatrical or athletic events.

*(Acts 1981, No. 81-409, p. 638, §14.)*

**Section 8-17-224**

**Penalty.**

Any individual, firm, partnership or corporation that violates any provisions of this article other than Section 8-17-218 shall be guilty of a Class A misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 or more than \$1,000 or imprisoned for not less than 30 days, or more than, one year or both, in the discretion of the court. Any person convicted of manufacturing, shipping into, possessing, or selling any illegal fireworks described in Section 8-17-218 shall be guilty of a Class C felony and upon conviction shall be punished by a fine of not less than \$500 nor more than \$5,000 or imprisoned not less than one year and one day or more than 10 years, or both, in the discretion of the court.

*(Acts 1981, No. 81-409, p. 638, §15; Acts 1987, No. 87-563, p. 876, §7.)*

**Section 8-17-225**

## **Authority of State Fire Marshal to seize and destroy illegal fireworks.**

The State Fire Marshal shall seize as contraband any fireworks other than the permitted "Class C Common Fireworks" and related items defined in Section 8-17-217 or "special fireworks" for public displays as provided in Section 8-17-216, which are sold, displayed, used or possessed in violation of this article. The fire marshal is authorized to destroy any illegal fireworks so seized.

*(Acts 1981, No. 81-409, p. 638, §16.)*

## **Section 8-17-226**

### **Effect of article on validity of city ordinances.**

This article shall in no wise affect the validity of any city ordinance further restricting the sale or use of fireworks.

*(Acts 1981, No. 81-409, p. 638, §17; Acts 1987, No. 87-563, p. 876, §8.)*

## **Section 8-17-274**

### **Fire Standards Compliant marking.**

(a) Cigarettes that are certified by a manufacturer in accordance with Section 8-17-273 shall be marked to indicate compliance with the requirements of Section 8-17-272. The marking shall be in eight point type or larger and consist of the letters FSC, which signifies Fire Standards Compliant, permanently printed, stamped, engraved, or embossed on the package at or near the UPC Code.

(b) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages including, but not limited to, packs, cartons, cases, and brands marketed by that manufacturer.

(c) Manufacturers certifying cigarettes in accordance with Section 8-17-273 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

*(Act 2009-630, p. 1927, §5.)*

## **Section 8-17-275**

### **Violations.**

(a) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 8-17-272, shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale provided that in no case shall the penalty against a person or entity for that violation exceed one hundred thousand dollars (\$100,000) during any 30-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 8-17-272 shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars (\$25,000) for sales or offers to sell during any 30-day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 8-17-273 shall be subject to a civil penalty of at least seventy-five thousand dollars (\$75,000) and not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

(d) Any person violating any other provision in this article shall be subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(e) Whenever any law enforcement personnel or duly authorized representative of the State Fire Marshal shall discover any cigarettes for which no certification has been filed as required by Section 8-17-273, or that have not been marked in the manner required by Section 8-17-274, such personnel is hereby authorized and empowered to seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the Attorney General may file an action in circuit court for a violation of this article, including petitioning for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this article, or to recover any costs or damages suffered by the state because of a violation of this article, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this article or rules adopted under this article constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this section, the State Fire Marshal or Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

*(Act 2009-630, p. 1927, §6.)*

#### **Section 8-17-276**

#### **Promulgation of rules; inspections.**

(a) The State Fire Marshal may promulgate rules pursuant to the Alabama Administrative Procedure Act necessary to effectuate the purposes of this article.

(b) The Department of Revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Section 40-2-11, may inspect the cigarettes to determine if the cigarettes are marked as required by Section 8-17-274. If the cigarettes are not marked as required, the Department of Revenue shall notify the State Fire Marshal.

*(Act 2009-630, p. 1927, §7.)*

#### **Section 8-17-277**

##### **Enforcement.**

To enforce this article, the Attorney General, the Department of Revenue, the State Fire Marshal, their duly authorized representatives, and other law enforcement personnel are hereby authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale is hereby directed and required to give the Attorney General, the Department of Revenue, the State Fire Marshal, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this section.

*(Act 2009-630, p. 1927, §8.)*

#### **Section 8-17-278**

##### **Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund.**

There is hereby established in the State Treasury a special fund to be known as the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund. The fund shall consist of all certification fees paid under Section 8-17-273 and monies recovered as penalties under Section 8-17-275. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for that purpose, be made available to the State Fire Marshal to support fire safety and prevention programs. All payments from the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund shall be made on the audit and warrant of the state Comptroller on vouchers certified and submitted by the State Fire Marshal.

*(Act 2009-630, p. 1927, §9.)*

#### **Section 9-3-10.1**

**Emergency Forest Fire, Insect and Disease Fund; creation; annual automatic appropriation; ceiling on amount; expenditures; replenishment; Governor's approval.**

(a) There is hereby established an Emergency Forest Fire, Insect and Disease Fund into which there is automatically appropriated \$180,000.00 annually at the beginning of each state fiscal year. The state Comptroller shall transfer said moneys from the General Fund to such emergency fund annually at the beginning of each state fiscal year. Said emergency fund shall not exceed a total accumulated amount of \$1,000,000.00. The moneys in said fund may be expended from time to time to meet emergency forest fire, insect and disease needs as deemed necessary by the State Forester and Governor. The moneys expended from said fund for such emergency needs shall be automatically replenished and are hereby appropriated from the General Fund annually to the extent of \$180,000.00 per year at the beginning of each state fiscal year until the said \$1,000,000.00 ceiling is reached. The state Comptroller shall make the transfer to replenish the funds within a period of one week following the commencement of each state fiscal year.

(b) The moneys appropriated herein may be expended for salaries, capital expenditures or any other category of expenditures deemed necessary by the State Forester for emergency forest fire, insect and disease suppression and control. This money shall be conditional upon approval of the Governor.

*(Acts 1979, No. 79-830, p. 1566, §§1, 2; Acts 1987, No. 87-821, §1.)*

**Section 9-3-11**

**Steering committee to represent rural community fire departments - Creation.**

The State Forester is hereby authorized and required to create a steering committee to represent rural community fire departments.

*(Acts 1978, No. 515, p. 569, §1.)*

**Section 9-3-12**

**Steering committee to represent rural community fire departments - Membership; appointment, qualifications and term of office of members; filling of vacancies in office.**

Said steering committee shall be composed of 13 members; one from each of the 10 administrative districts of the Alabama Forestry Commission, one member from the Alabama Association of Volunteer Fire Departments, one member from the Alabama Association of Fire Chiefs and one member from the Alabama Firemen's Association. The President of the Alabama Association of Fire Chiefs shall appoint one member of his association to serve on the committee, the President of the Alabama Association of Volunteer Fire Departments shall appoint one member of his association to serve on the committee, and the President of the Alabama Firemen's Association shall appoint a member of his association to serve on the committee. The State Forester shall appoint the remaining committee members from each administrative district of the Alabama Forestry Commission, with each such member being a volunteer

fireman. All members shall serve at the pleasure of their appointing authority. Vacancies on the committee shall be filled by the same appointing authority who appointed the vacating member.

*(Acts 1978, No. 515, p. 569, §3; Acts 1984, No. 84-474, p. 1095, §1.)*

#### **Section 9-3-13**

##### **Steering committee to represent rural community fire departments - Recommendations to State Forester.**

The steering committee shall make recommendations to the State Forester regarding how to improve the rural community fire program and how to solve immediate problems including parts exchange, training and financial assistance through federal grants.

*(Acts 1978, No. 515, p. 569, §2.)*

#### **Section 9-3-14**

##### **Steering committee to represent rural community fire departments - Meetings; quorum.**

The committee shall meet semiannually, with the members of the committee setting the date. The State Forester shall have the authority to call special meetings. A majority of members shall constitute a quorum.

*(Acts 1978, No. 515, p. 569, §4.)*

#### **Section 9-3-15**

##### **Steering committee to represent rural community fire departments - Compensation and expenses of members.**

Members of the committee shall not be compensated for their services, but each shall be entitled to reimbursement for travel expenses in the same manner and amount that state employees are reimbursed. Such expenses shall be paid out of forestry commission funds.

*(Acts 1978, No. 515, p. 569, §5.)*

#### **Section 9-3-16**

##### **Advisory committee on general forestry matters.**



The State Forester is further authorized to establish a committee and call meetings of such committee to advise him on general forestry matters in Alabama. It shall consist of not more than 15 members. Section 9-3-15 shall apply in its entirety to this committee.

*(Acts 1978, No. 515, p. 569, §6.)*

#### **Section 9-3-17**

#### **Certification of fire departments of political subdivisions as "volunteer fire department."**

(a) The term "volunteer fire department" shall apply to and be used to define an organized group of area residents who meet the following requirements for personnel, training and equipment:

(1) The group shall be organized and incorporated under the laws of the State of Alabama as a nonprofit organization or as an authority of a legal subdivision. All persons who are members of said group shall be known as "volunteer fire fighters," and shall have been qualified as such by participating in organized fire protection and suppression training programs. All fire fighters must attend regularly scheduled meetings, drill, and training classes within the department and same shall be documented and kept on file at the department location for one year.

(2) A "volunteer fire department" shall have no less than 80 percent unsalaried membership.

(3) Each volunteer fire department shall have as a minimum of fire fighting apparatus the following:

a. One tanker truck capable of carrying and pumping no less than 500 gallons of water with adequate nozzle pressure to suppress wildfire, structural fire and other fires.

b. Motorized apparatus shall be equipped with the following minimum required equipment:

1. One booster reel with 150 feet of 3/4 or one inch rubber hose with suitable nozzle attached; or

2. 150 feet of pre-connected 1 1/2 inch fire hose with suitable fog/stream nozzle attached.

c. In areas where a sufficient number of fire hydrants are provided, the tanker shall also carry 200 feet of 2 1/2 inch fire hose together with a 2 1/2 to 1 1/2 inch wye connector for use with smaller hose and other equipment.

d. One 24 foot extension ladder with a 12 foot roof ladder.

e. Hand tools - spanner wrenches, axes, pike pole, bolt cutter, flashlights, a first aid kit and one each pressure water and a chemical fire extinguisher.

(4) An alerting system must be set up and maintained, which will be capable of alerting the greatest number of fire fighters in the shortest possible time.

(5) Communications between the tanker and other units, including the base station are to be installed at the earliest possible time; however, the use of citizen band radio equipment is not recommended.

(6) Housing for motorized equipment shall be provided at the department location of such type and size as to provide virtually freezeproof conditions for vehicles. A training room should also be provided at the earliest possible time.

(b) All of the aforementioned items shall consummately define a "volunteer fire department," for purposes of legal recognition, but are not to be construed as standards set for any insurance classification by insurance services office or any other local, state or other agency.

(c) The Alabama Forestry Commission may assist any fire department needing additional equipment to meet the standards for certification.

(d) The Alabama Forestry Commission shall be the state agency delegated as certifying authority under this section and shall certify all departments which are cooperators with that commission.

(e) All noncooperating departments which request certification shall be reviewed by the Alabama Association of Volunteer Fire Departments and a recommendation for certification shall be made by the association to the Alabama Forestry Commission.

(f) The provisions of this section shall supersede and take precedence over any local law or municipal ordinance in conflict herewith. All laws or parts of laws in conflict herewith are hereby repealed.

*(Acts 1980, No. 80-393, p. 549, §§ 1-8.)*

### **Section 9-3-18**

#### **Public governmental entities, political subdivisions, etc., authorized to make donations to organizations deemed public in nature.**

(a) It is the intent of the Legislature that this section provides assistance to organized volunteer fire departments and organized search, air, and rescue squads including South Alabama Air Rescue, Incorporated, and other nonprofit organizations which provide search, air, or rescue services to the public. The Legislature deems these organizations public in nature, as they protect the health, safety, and welfare of the public.

(b) The state and any department, office, or agency of the state, and any county, any municipality, any fire, water, sewer, garbage, or school district, or any other public governmental entity or political subdivision may donate money, property, equipment, or other thing of value to those organizations deemed public in nature as specified in subsection (a). Unless the donating agency or entity specifies otherwise at the time of donation, the organization receiving the donation may dispose of any property received under this section pursuant to Article 6, Sections 41-16-120 to 41-16-125, inclusive, of Chapter 16, Title 41.

*(Acts 1981, No. 81-555, p. 935, §§1, 2; Acts 1996, No. 96-612, p. 965, §1; Act 2012-555, p. 1635, §1; Act 2013-413, §1.)*

### **Section 9-3-19**

#### **Donation of fire control property.**

(a) As used in this section, the term "fire control or fire rescue equipment" includes, but is not limited to, a motor vehicle, fire fighting tools, protective gear, breathing equipment, and other vehicles, supplies, and tools used in fire fighting or fire rescue.

(b) Any person, corporation, partnership, association, or governmental entity may donate or give away used or obsolete fire control or fire rescue equipment to the Alabama Forestry Commission for its use or for distribution to certified volunteer fire departments. Any person, corporation, partnership, association, or governmental entity that donates fire control or fire rescue equipment shall not be liable for civil damages for personal injury, property damage, or death resulting from a defect in the equipment, if the property was donated in good faith and the defect was unknown to the person making the donation. The Alabama Forestry Commission and its Commissioners and other officers and employees shall not be liable for civil damages for personal injury, property damage, or death resulting from a defect in equipment sold, loaned, donated, or otherwise made available in good faith by the commission to certified volunteer fire departments pursuant to this section. A breathing apparatus that is donated to the commission shall be recertified to the manufacturer's specifications by a technician certified by the manufacturer before it is made available to a volunteer fire department. Any cost incurred by the commission in recertifying a breathing apparatus shall be reimbursed to the commission by the volunteer fire department which received the breathing apparatus.

*(Act 98-291, p. 477, §1.)*

### **Section 9-13-5**

#### **Designation or appointment of forest wardens; duties.**

All sheriffs, deputy sheriffs, constables, marshals and such other persons as may be designated or appointed by the Governor or by the State Forester are hereby declared to be forest wardens, and they shall report to the said State Forester and to the district attorney for the county in which the same occur any violations of any provisions of this chapter.

*(Acts 1923, No. 486, p. 638, §14; Code 1923, §1007; Acts 1935, No. 23, p. 38, §1; Acts 1935, No. 500, p. 1078, §1; Code 1940, T. 8, §203.)*

### **Section 9-13-6**

#### **Forest fire wardens - Appointment; duties generally.**

The State Forester shall have the power to appoint any person in any area of the state who is skilled in forestry work or fire prevention as a forest fire warden, on a volunteer status, whose duties shall be to prevent and suppress forest fires in his respective locale. All persons so appointed shall receive a duly executed commission signed by the State Forester stating on the face thereof the appointee's name and title.

*(Acts 1955, No. 366, p. 886, §1.)*

#### **Section 9-13-7**

##### **Forest fire wardens - Right of entry upon lands for construction of fire lines, etc.**

Persons so appointed as forest wardens shall be empowered to enter any lands and to construct thereon fire lines, fire lanes or fire breaks, to set back fires thereon if necessary to prevent the further spread of fire then actually burning and to do other work necessary in the performance of their duties without liability for trespass or damages therefrom.

*(Acts 1955, No. 366, p. 886, §2.)*

#### **Section 9-13-8**

##### **Forest fire wardens — Issuance to and use of fire-fighting equipment.**

At the discretion of the State Forester, such forest fire wardens may be issued fire-fighting equipment from such equipment as may be available for such purposes to the State Forestry Commission, and any such equipment so issued may be used only for the suppression of forest fires.

*(Acts 1955, No. 366, p. 886, &sect;3.)*

#### **Section 9-13-9**

##### **Forest fire wardens - Compensation.**

The State Forester, with the approval of the state merit board, shall have the power to provide for the compensation to be received by such forest fire wardens if, in his judgment, he deems such compensation necessary; provided, that they shall receive compensation only for such hours as are spent on fire fighting and for any actual expenses incurred by them in the performance of such duties.

*(Acts 1955, No. 366, p. 886, §4.)*

### **Section 9-13-10**

#### **Powers of State Forestry Commission employees as to enforcement of laws, prevention and suppression of forest fires, etc.**

All employees of the State Forestry Commission appointed as forest law enforcement officers by the State Forester are hereby constituted peace officers of the State of Alabama with full police power and may exercise such powers anywhere within the state. They are hereby authorized to carry firearms or other weapons when they are actually in the discharge of their duties as such officers as provided by law. They shall be clothed with the power to arrest with or without warrant any person who shall violate any of the laws of the State of Alabama or any rule or regulation of the Alabama Forestry Commission and take him before a proper court for trial. All employees of the State Forestry Commission and all duly appointed officers of the United States whose duty it is to prevent and suppress forest fires are empowered to enter any lands and to construct thereon fire lines, fire lanes or fire breaks, to set back fires thereon if necessary to prevent the further spread of fire then actually burning and to do all other work necessary in the performance of their duties, including the right to enter any lands for the purpose of making investigations for the cause or causes of fires, without liability for trespass or damage therefrom.

*(Acts 1939, No. 492, p. 711, § 3; Code 1940, T. 8, &sect;206; Acts 1967, No. 724, p. 1560, § 1; Acts 1980, No. 80-507, p. 786, § 1.)*

### **Section 9-13-10.1**

#### **Assistance of State Forestry Commission in control and suppression of wildfires by other state agencies.**

All state agencies, in the performance of their duties and responsibilities to the people of Alabama, are authorized to aid and assist the State Forestry Commission in the control and suppression of wildfires, on request of the Governor of Alabama, with such requested resources that are reasonably available and needed to cope with the specific situation.

*(Acts 1976, No. 102, p. 98.)*

### **Section 9-13-11**

#### **Willful, malicious, or intentional setting on fire, etc., of woodlands, grasslands, etc.; burning permits; fire alerts; organized forest fire protection; fines.**

(a) It shall be a Class C felony for every person, firm, association, or corporation to do either of the following:

(1) Willfully, maliciously or intentionally burns, sets fire to, attempts to set fire to, or causes to be burned or any fire to be set to any forest, grass, woodlands, or other inflammable vegetation on any

lands not owned, leased, controlled, or in the lawful possession of the person, firm, association, or corporation setting the fire or burning such lands or causing the fire to be set or lands to be burned.

(2) Shall have in his or her possession or shall set, throw or place any device, instrument, or other incendiary paraphernalia, including any time-delay incendiary device, in or adjacent to any forest, grass, woodlands, or other inflammable vegetation, which forest, grass, woodland or other inflammable vegetation is not owned, leased, controlled, or in the lawful possession of the person possessing such device, instrument, or paraphernalia.

(b) It shall be a Class B misdemeanor for any person, firm, association, or corporation:

(1) Who recklessly or with wanton disregard for the safety of persons or property allows a fire to escape from land owned, leased, or controlled by him or her, whereby any property of another is injured or destroyed;

(2) Who shall burn any brush, stumps, logs, rubbish, fallen timber, grass, stubble, or debris of any sort, whether on one's own land or that of another, without taking reasonably necessary precautions, both before lighting the fire and all times thereafter to prevent the escape thereof;

(3) Who shall set fire to any brush, stumps, logs, rubbish, fallen timber, grass, stubble, or debris of any sort within or near any forest or woodland, unless the area surrounding said material to be burned shall be cleared of all inflammable material for a reasonably safe distance in all directions and maintained free of all inflammable material so long as such fire shall continue to burn;

(4) Who shall set a fire within or near any forest, woodland, or grassland without clearing the ground immediately around it free from material which will carry fire, or shall leave such fire before it is totally extinguished or start a fire in any forest, woodland, or grassland by throwing away a lighted cigar, cigarette, match or by the use of firearms or in any other manner and leave the same unextinguished;

(5) Who shall destroy, remove, injure, or deface any fire warning or notices or deface any inscription or devices comprising such notices;

(6) Who shall burn any new ground, field, grasslands, or woodlands, or adjoining woodlands or grasslands of another within any area which has been placed under organized forest fire protection by the State Forestry Commission without first obtaining verbal authorization from the State Forestry Commission by obtaining a burning permit number.

(c) It shall be a Class A misdemeanor for any person to recklessly or with wanton disregard for the safety of persons or property burn, set fire to, attempt to set fire to, or cause to be burned or any fire to be set to any forest, grass, woodlands, or other inflammable vegetation on any lands not owned, leased, controlled, or in the lawful possession of the person setting the fire or burning such lands or causing the fire to be set or lands to be burned without the permission of the lawful owner.

(d) (1) Burning permits may be obtained from the district operations center when the center is in active operation. The following criteria must be met:

a. The person requesting the permit must have adequate tools, equipment, and manpower to stay with and control the fire during the entire burning period.

b. The person requesting the permit is responsible to keep the fire confined.

c. In no case will the person requesting the permit allow the fire to be unattended until it is dead out.

(2) Burning permits will be issued if the individual requesting the permit states that the above criteria will be met unless the State Forester shall declare a fire alert. Under fire alert conditions the State Forester may allow issuance of permits at his or her discretion, taking into account the number of fires burning in the district, current and projected weather conditions, the ability of the person seeking the permit to contain the fire and that individual's knowledge of fire behavior, and other factors which may affect fires and fire behavior. A fire alert will be issued by the State Forester for any district or portion of a district that in the opinion of the State Forester, has existing conditions which produce extraordinary danger from fire or smoke.

(3) If subsequent to issuance of a permit a lawfully authorized fire escapes to the lands of another and an investigation reveals that the permit holder did not meet all the criteria as set forth above, the fire will be treated as if no legal authorization had been obtained.

(4) A burning permit once issued may be revoked if the person requesting the permit fails to comply with proper burning procedures or if weather conditions develop which may result in erratic fire or smoke behavior.

(e) An area shall be deemed legally placed under organized forest fire protection by the State Forestry Commission of the State of Alabama upon proclamation of the State Forester. Such proclamation shall describe the lands placed in said area and shall be published once a week for two consecutive weeks in a newspaper published in the county where the lands composing said area are located. If there are no newspapers published in the county where said lands are located, then said proclamation shall be published in a newspaper of an adjoining county. In the event the lands composing said area are located in more than one county, such proclamation shall be so published in a newspaper in each county where said lands are located. Beginning with the twelfth day after the first publication of said proclamation in said newspaper or newspapers, the lands described in the proclamation shall be deemed in an area under organized forest fire protection. Upon the trial of any person, firm, or corporation for the violation of any provision of this section, a certified copy of said proclamation executed by the State Forester shall be admissible in evidence and shall be conclusive evidence of the fact that the lands described in said proclamation constitute an area under organized forest fire protection within the meaning of this section.

(f) All moneys collected for any violation of this section as fines, forfeitures, etc., shall go to the Alabama Forestry Commission Fund and shall be used in defraying the expense of the administration of such State Forestry Commission.

*(Acts 1939, No. 492, p. 711, §1; Code 1940, T. 8, §204; Acts 1943, No. 464, p. 426, §1; Acts 1980, No. 80-743, p. 1512, §1; Act 98-603, p. 1321, §1; Act 2010-603, p. 1471, §1.)*

#### **Section 9-13-12**

**Uncontrolled fires declared public nuisances; liability for refusal or neglect to control or extinguish same.**



Any fire burning uncontrolled on any forested, cutover, brushland or grassland area is hereby declared to be a public nuisance by reason of its menace to life and property. Any person, firm, association or corporation responsible either for the starting or the existence of such fire is hereby required to make a reasonable effort to control or extinguish it as soon as he has knowledge thereof, and if such person, firm, association or corporation shall refuse or neglect to do so, any organized fire suppression force may suppress the nuisance thus constituted by controlling and extinguishing the fire, and the cost thereof may be recovered from said person, firm, association or corporation responsible for the starting or existence of such fire.

*(Acts 1939, No. 429, p. 711, § 2; Code 1940, T. 8, §205.)*

#### **Section 9-13-13**

##### **Setting on fire, etc., of woods, etc., without written notice to adjacent landowners.**

Any person or corporation who shall set fire to or procure another to set fire to any woods, logs, brush, weeds, grass or clearing upon his or its own land without giving adjacent landowners five days' written notice of such intention to do so, unless he or it shall have taken all possible care and precaution against the spread of such fire, shall be guilty of a misdemeanor.

*(Acts 1923, No. 486, p. 638, § 12; Code 1923, &sect;4114; Code 1940, T. 8, &sect;207.)*

#### **Section 9-13-14**

##### **Equipping of locomotives, etc., with appliances to prevent escape of fire.**

Logging and railroad locomotives, donkey and threshing engines and other engines and boilers operated in, through and near forest or brush which do not burn oil as fuel shall be provided with appliances to prevent the escape of fire and sparks from the smoke stacks thereof and with devices to prevent the escape of fire from ashpans and fire boxes. Failure to comply with the requirements of this section shall be a misdemeanor punishable, upon conviction, by a fine of not less than \$10.00 nor more than \$100.00 for each and every offense thus committed; but the escape of fire accidentally from engines equipped with the standard appliances to prevent the escape of fire shall not constitute an offense against the section.

*(Acts 1923, No. 486, p. 638; Code 1923, §4115; Code 1940, T. 8, §208.)*

#### **Section 9-13-15**

##### **Attachment of wires, etc., to trees in towns or cities by lighting or power companies.**

No electric lighting or power company shall attach any wires or other lighting appliances to any trees along any street of any town or city in this state. In towns and cities where such wires and lighting appliances are already attached to trees, the persons, firms or corporations owning the same shall remove the same. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$25.00 nor more than \$100.00 for each and every offense so committed.

*(Acts 1923, No. 486, p. 638; Code 1923, §4118; Code 1940, T. 8, §211.)*

#### **Section 11-40-18**

##### **Minimum benefits under certain policemen's and firemen's pension and relief plans.**

In all Class 1 municipalities, notwithstanding any provision of law to the contrary, any benefit payable on a monthly basis to a participant or retiree under the Policemen's Pension and Relief Plan provided by Act No. 502 of the 1923 Session of the legislature of Alabama, as amended or codified; the Firemen's Pension and Relief Plan provided by Act No. 307 of the 1943 Session of the legislature of Alabama, as amended (General Acts of Alabama of 1943, p. 264); the Limited Policemen's Retirement and Relief System provided by Act No. 470 of the 1955 Regular Session of the legislature of Alabama, as amended (Acts of Alabama of 1955, p. 1067); and Limited Firemen's Pension and Relief System provided by Act No. 217 of the 1966 Special Session of the legislature of Alabama, as amended (Acts of Alabama, Special Session 1966, p. 280) shall not be of an amount less than \$400.00 per month, and any survivor's or spouse's benefit payable on a monthly basis shall not be of an amount less than \$160.00 per month.

*(Acts 1988, No. 88-642, p. 1028, §1.)*

#### **Section 11-40-18.1**

##### **Minimum benefits under certain policemen's and firemen's pension and relief plans.**

Notwithstanding any other laws, in Class 1 municipalities, any benefit payable on a monthly basis to a participant or retiree under the Policemen's Pension and Relief Fund provided by Act No. 502 of the 1923 Session of the Legislature, as amended, the Firemen's Pension and Relief Fund provided by Act No. 307 of the 1943 Session of the Legislature, as amended, the Separate Policemen's Retirement and Relief System provided by Act No. 470 of the 1955 Regular Session of the Legislature, as amended, or the Separate Firemen's Pension and Relief System provided by Act No. 217 of the 1966 Special Session of the Legislature, as amended, shall be in an amount not less than five hundred fifty dollars (\$550) per month, and any survivor's or spouse's benefit payable therefrom on a monthly basis shall be in an amount not less than three hundred twenty dollars (\$320) per month.

*(Acts 1994, No. 94-658, p. 1271, §1.)*

## **Section 11-40-18.2**

### **Liability and indemnification under firemen's and policemen's supplemental pension system.**

In the absence of wantonness or willful misconduct, in any Class 1 municipality, the board of firemen and policemen for the Class 1 municipality, the members of the board of firemen and policemen, and any officer, employee, or agent of a Class 1 municipality or of the board of firemen and policemen shall not incur any liability, individually or on behalf of any other individuals or on behalf of a Class 1 municipality or the board of firemen and policemen in a Class 1 municipality, for any act or failure to act in relation to the plan or the fund of any firemen's and policemen's supplemental pension system established pursuant to Act 556 of the 1959 Regular Session (Acts 1959, p. 1376).

In the absence of wantonness or willful misconduct, officers and members of the board, employees in any Class 1 municipalities, and agents of any Class 1 municipality and of the board of firemen and policemen shall be indemnified against any and all liabilities arising by reason of any act, or failure to act, in relation to the plan or the fund of the firemen's and policemen's supplemental pension system. This indemnification shall not apply to any act or failure to act made in bad faith, nor shall it apply to a paid consultant or paid agent of the fund. This indemnification shall include, without limitation, expenses reasonably incurred in the defense of any claim relating to the plan or the fund of the firemen's and policemen's supplemental pension system, and amounts paid in any compromise or settlement relating to the plan or the fund of the firemen's and policemen's supplemental pension system. The indemnification shall be paid from the fund and shall apply retrospectively as well as prospectively.

*(Act 2001-966, 3rd Sp. Sess., p. 860, §1; Act 2004-438, p. 748, §1.)*

## **Section 11-43-59**

### **Adoption of fire limits, building laws and ordinances, etc.; condemnation of buildings, etc.; charges for inspections.**

The council may prescribe fire limits in any city or town, and buildings of wood or other inflammable material shall not be erected therein. The council may do all things necessary to prevent conflagration and give security to the inhabitants of the city or town from fires. The council may adopt building laws and may employ building inspectors to see that the laws are not violated and that the plans and specifications for buildings are not in conflict with the ordinances of the city or town and may exact fees to be paid by the owners of the property inspected. The council may secure the safety of persons from fire in hotels and halls and in such other buildings as may be designated by the council, to have and maintain ample means of exit in case of fire, and may refuse to license and may prevent the use of such buildings for such purposes until such ordinances have been complied with. The council may adopt ordinances requiring buildings to be equipped with fire escapes when in the opinion of the council they are necessary. The council may condemn buildings, parts of buildings, or structures dangerous to the public and prohibit the use thereof and abate the same as a nuisance. The council may make reasonable charges for the service of plumbing and electric wiring inspection, inspection of foods and feedstuffs, meats and vegetables, and weights and measures.

*(Code 1907, §1264; Code 1923, §2012; Code 1940, T. 37, §436.)*

#### **Section 11-43-60**

#### **Regulation of storage, use, etc., of explosives; compulsion of efficient service by public utility corporations.**

(a) The council may regulate and control or prohibit the erection of powder magazines within the police jurisdiction of the city or town, and prevent explosives and dangerous substances from being stored within the city or town and regulate the manner in which explosives may be hauled or kept within the police jurisdiction.

(b) The council may compel public utility corporations using a franchise obtained from the municipality to render efficient service to the inhabitants thereof.

*(Code 1907, §1271; Code 1923, §2019; Code 1940, T. 37, §437.)*

#### **Section 11-43-140**

#### **Authorized; management and control.**

Cities and towns may maintain and operate a volunteer or paid fire department and may do any and all things necessary to secure efficient service. The council may delegate to commissioners by ordinance the power to control and manage such fire department under such rules and regulations as the commissioners or the council may prescribe.

*(Code 1907, §1265; Code 1923, §2013; Code 1940, T. 37, §450.)*

#### **Section 11-43-141**

#### **Operation, etc., beyond corporate limits and police jurisdiction - Emergencies; liabilities, exemptions, etc.**

Whenever the necessity arises during any emergency resulting from fire or other public disaster, the firemen of any city or town may, together with all necessary equipment, lawfully go or be sent beyond the corporate limits and police jurisdiction of such city or town to any point within the State of Alabama to assist in meeting such emergency.

In such event the acts performed for such purpose by such firemen and the expenditures made for such purpose by such city or town shall be deemed conclusively to be for a public and governmental purpose and all of the immunities from liability enjoyed by a city or town when acting through its firemen for a public or governmental purpose within its corporate limits and police jurisdiction shall be enjoyed by it to the same extent when such city or town is so acting under this section or under other lawful authority beyond its corporate limits and police jurisdiction.

The firemen of any city or town when acting under this section or under other lawful authority beyond the corporate limits and police jurisdiction of such city or town shall have all of the immunities from liability and exemptions from laws, ordinances, and regulations and shall have all of the pension, relief, disability, workmen's compensation, and other benefits enjoyed by them while performing their respective duties within the corporate limits and police jurisdiction of such city or town.

*(Acts 1955, No. 558, p. 1219, §1.)*

#### **Section 11-43-142**

#### **Operation, etc., beyond corporate limits and police jurisdiction - Contracts with municipalities, counties, manufacturing or industrial concerns, etc.; liability for injuries.**

The governing body of any city or town may, in its discretion, authorize or require the fire department thereof to render aid in cases of fire occurring beyond their corporate limits and police jurisdiction, and may prescribe the conditions on which such aid may be rendered and may enter into a contract or contracts with other cities or towns, with counties or county boards, manufacturing or industrial concerns, or residential or business areas for rendering aid in fire protection in such places on such terms as may be agreed upon by such governing body and the governing body of such city or town, county or county boards, or the management of such manufacturing or industrial concerns or the residents of such residential or business areas, and when the fire department of any city or town is operating under such permission or contract or contracts on any call beyond the corporate limits and police jurisdiction of the city or town, it shall be deemed to be operating in a governmental capacity and subject only to such liability for injuries as it would be if it were operating within the corporate limits and police jurisdiction of such city or town.

*(Acts 1955, No. 558, p. 1219, §2.)*

#### **Section 11-43-143**

#### **Municipal or state firefighters or firemen not to strike, assert right to strike, etc.; rights to join labor organizations, etc.**

(a) No person shall accept or hold any commission or employment as a firefighter or fireman in the service of the state or of any municipality in the state who participates in any strike or asserts the right to strike against the state or any municipality of the state, or be a member of an organization of employees that asserts the right to strike against the state or any municipality in the state knowing that such organization asserts such right.

(b) All firefighters serving the state or any municipality in the state either as paid firemen or as volunteer firefighters who comply with the provisions of this section are assured the right and freedom of association, self-organization, and the right to join or to continue as members of any employee or labor organization which complies with this section, and shall have the right to present proposals relative to salaries and other conditions of employment by representatives of their own choosing. No such person

shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion compel or attempt to compel any firefighter or fireman to join or refrain from joining a labor organization.

*(Acts 1967, No. 229, p. 598.)*

#### **Section 11-43-144**

#### **Compensation for death or disability of firefighters from occupational diseases.**

(a) As used in this section the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the context:

(1) CITY. Any municipality of the state, regardless of its population.

(2) FIREFIGHTER. A person employed as a firefighter by a city.

(3) FIREFIGHTER'S OCCUPATIONAL DISEASE. Any condition or impairment of health caused by any of the following:

a. Hypertension.

b. Heart disease.

c. Respiratory disease.

d. Cancer which manifests itself in a firefighter during the period in which the firefighter is in the service of the city, provided the firefighter demonstrates that he or she was exposed, while in the employ of the city, to a known carcinogen which is reasonably linked to the disabling cancer, and the cancer shall be presumed to arise out of and in the course of the firefighter's employment unless the city demonstrates by a preponderance of the evidence that the cancer was caused by some other means.

e. AIDS which manifests itself in a firefighter during the period in which the firefighter is in the service of the city, provided the firefighter demonstrates that he or she was exposed to AIDS while in the line and scope of his or her employment with the city.

f. Hepatitis which manifests itself in a firefighter during the period in which the firefighter is in the service of the city, provided the firefighter demonstrates that he or she was exposed to hepatitis while in the line and scope of his or her employment with the city.

(4) DISABILITY. Disability to perform duties as a firefighter.

(5) BENEFIT. Any monetary allowance payable by a city or from a pension system established for the firemen of a city to a firefighter on account of his or her disability or to his or her dependents on account of his or her death, irrespective of whether the same is payable under a pension law of the state or under some other law of the state.

(b) This section shall apply to firefighters who, upon entering the service of the city as firefighters, have successfully passed a physical examination which failed to reveal any evidence of a firefighter's occupational disease and who have completed at least three years' service as firefighters.

If a physical examination was not required at the time of entry into service, a firefighter who has completed at least three years' continuous service as a firefighter next preceding September 8, 1967, shall be deemed eligible for benefits under this section.

(c) If a firefighter who qualifies for benefits under this section suffers disability as a result of a firefighter's occupational disease his or her disability shall be compensable the same as any service-connected disability under any law which provides benefits for firefighters of the city injured in the line of duty. If a firefighter who qualifies for benefits under this section dies as the result of a firefighter's occupational disease, his or her death shall be compensable to the same extent as the death of a firefighter killed in the line of duty, and shall be considered to have been killed in the line of duty for purposes of Sections 36-30-1 to 36-30-7, inclusive.

(d) In the case of cancer, heart disease, hypertension, and respiratory disease, the municipality must prove by a preponderance of the evidence that the condition was caused by some means other than the occupation to disqualify the firefighter from benefits.

*(Acts 1967, No. 570, p. 1323; Acts 1990, No. 90-303, p. 414; Acts 1994, No. 94-250, p. 465, §1; Acts 1995, No. 95-547, p. 1148, §1; Act 2004-640, §1.)*

#### **Section 11-50-340**

##### **Definitions.**

As used in this article, the following words and terms shall have the following meanings unless the context shall indicate another meaning or intent:

(1) CITY. Any incorporated city in the State of Alabama.

(2) COUNCIL. The city council, city commission, or other board or body in which the general legislative powers of a city shall be vested.

(3) BOARD. A board of water and sewer commissioners created under the provisions of Section 11-50-341 or, if any such board shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to which the powers given by this article to such board shall be given by law.

(4) WATER SYSTEM. Such term shall include all plants, systems, facilities, or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements, and franchises relating thereto and deemed necessary or convenient by the board for the operation thereof.



(5) SEWAGE. The water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments, or any other private or public building together with such surface or ground water or household and industrial wastes as may be present.

(6) SEWAGE DISPOSAL SYSTEM. Such term shall include any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification, or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade, or business or from the development of any natural resources) or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains, and all necessary appurtenances and equipment and all property, rights, easements, and franchises relating thereto and deemed necessary or convenient by the board for the operation thereof.

(7) SEWERS. Such term shall include mains, pipes, and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the board.

(8) SEWER SYSTEM. Such term shall embrace both sewers and sewage disposal systems and all property, rights, easements, and franchises relating thereto.

(9) IMPROVEMENTS. Such repairs, replacements, additions, extensions, and betterments of and to a water system or a sewer system as are deemed necessary by the board to place or to maintain such system in proper condition for its safe, efficient, and economic operation or to meet requirements for service in areas which may be served by the board and for which no existing service is being rendered.

(10) COST. As applied to a water system or a sewer system, such term shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery, and equipment, the cost of improvements, the cost of all lands, property, rights, easements, and franchises required, financing charges, interest prior to and during construction and for one year after completion of construction, the cost of plans and specifications, surveys, and estimates of cost and of revenues, the cost of engineering and legal services and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expenses and such other expenses as may be necessary or incident to the financing authorized by this article. Any obligations or expenses incurred by the board in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the board out of the proceeds of revenue bonds issued under the provisions of this article.

*(Acts 1951, No. 775, p. 1359, §1.)*

#### **Section 11-88-1**

#### **Definitions.**

When used in this article, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) **APPLICANT.** A natural person who files a written application with the governing body of any county in accordance with the provisions of Section 11-88-3.
- (2) **AUTHORITY.** A public corporation organized pursuant to the provisions of this article.
- (3) **BOARD.** The board of directors of an authority.
- (4) **BONDS.** Bonds, notes, and certificates representing an obligation to pay money.
- (5) **CONCISE LEGAL DESCRIPTION.** A reasonably concise description of a particular geographic area which may be by metes and bounds or by reference to government surveys, recorded maps and plats, municipal, county, or state boundary lines, well-defined landmarks and other monuments, or any combination of the foregoing.
- (6) **COUNTY.** Any county in the state.
- (7) **DETERMINING COUNTY.** Any county the governing body of which shall have made findings and determinations of fact in accordance with the provisions of Section 11-88-3.
- (8) **DIRECTOR.** A member of the board of directors of the authority.
- (9) **FIRE PROTECTION FACILITY.** Land, plants, systems, facilities, buildings, fire engines, fire hydrants, ladders, equipment, hoses, alarm apparatus, chemicals, uniforms, supplies, or any combination of any thereof used or useful or capable of future use in furnishing fire protection service and all other property deemed necessary or desirable by the authority for use in furnishing fire protection service.
- (10) **FIRE PROTECTION SERVICE.** All services involved in protecting property and life from fires, including but not limited to discovering, ascertaining, extinguishing, preventing the spread of or fighting fires, or inspecting property for fire hazards, or any part or combination thereof. The supplying of water for use in the rendition of fire protection service shall be deemed to constitute fire protection service. The searching for, testing for, or drilling for water, the installation of necessary access ways, electric, gas, sewer, telephone, and water lines to, from, and for, the construction of buildings and accessory structures used for, and the operation and maintenance of, and pumping water from a well, a spring, a creek, a river or tributary thereof, a reservoir, or a tank by a public corporation organized under the provisions of this chapter which has as one of its stated purposes, within its certificate of incorporation or a duly adopted amendment thereto, the rendering of fire protection services shall be deemed to constitute fire protection service. Anything herein to the contrary notwithstanding, no provision of this definition shall apply to any public corporation organized under this chapter which does not specifically have as one of its stated purposes, within its certificate of incorporation or a duly adopted amendment thereto, the rendering of fire protection services.
- (11) **GOVERNING BODY.** The county commission of a county.
- (12) **INCORPORATORS.** The persons forming a public corporation organized pursuant to the provisions of this article.
- (13) **MUNICIPALITY.** An incorporated city or town of the state.

(14) **NEW TERRITORY.** Any territory added, by amendment to the certificate of incorporation of an authority, to the area or areas in which that authority is authorized to render water service, fire protection service, sewer service or any thereof.

(15) **PERSON.** Unless limited to a natural person by the context in which it is used, such term includes a public or private corporation, a municipality, a county, or an agency, department, or instrumentality of the state or of a county or municipality.

(16) **PROPERTY.** Real and personal property and interests therein.

(17) **PUBLIC FIRE PROTECTION FACILITY.** A fire protection facility which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation organized under the laws of the state, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(18) **PUBLIC SEWER SYSTEM.** A sewer system which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation organized under the laws of the state, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(19) **PUBLIC WATER SYSTEM.** A water system which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation organized under the laws of the state, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(20) **SERVICE AREA.** The geographic area or areas in which an authority is authorized by its certificate of incorporation or any amendment thereto to render water service, fire protection service, sewer service or any thereof, which area may include not only territory located outside the boundaries of any municipality but also territory located within the boundaries of one or more municipalities.

(21) **SEWER SERVICE.** All services involved in collecting, transporting, treating, and disposing of sanitary sewage and the performing of all functions and activities reasonably incident to the operation of a sewer system.

(22) **SEWER SYSTEM.** A sanitary sewer system, including mains, laterals, sewage disposal plants, and sewage treatment plants and all appurtenances to such a system and all properties, rights, easements, and franchises deemed necessary or desirable by the authority for use in rendering sewer services.

(23) **STATE.** The State of Alabama.

(24) **WATER SERVICE.** The providing, furnishing, supplying, or distributing of water and the performing of all of the functions and activities reasonably incident to the operation of a water system, including the provision of water to a fire protection authority to be used in the rendition of fire protection service. The searching for, testing for, drilling for, installation of necessary access ways, electric, gas, sewer, telephone, and water lines to, from, and for the construction, operation, and

maintenance of buildings and accessory structures used for pumping from a well, a spring, a creek, a river or tributary thereof, a reservoir, or a tank by a public corporation organized under the provisions of this chapter shall be deemed to be an authorized function of water service, but shall not exclusively constitute water service.

(25) WATER SYSTEM. Land, plants, systems, facilities, buildings, and other property, or any combination of any thereof, which are used or useful or capable of future use in providing, furnishing, supplying, or distributing water, including but not limited to water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, meters, valves, and all necessary appurtenances and equipment, and all properties, rights, easements, and franchises deemed necessary or desirable by the authority for use in rendering water service.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §1; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §1; Act 2013-334, §1.)*

#### **Section 11-88-2**

##### **Purpose of article.**

This article is intended to aid the state in the execution of its duties by providing appropriate and independent instrumentalities of the state with full and adequate powers to fulfill their functions.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §16; Acts 1965, No. 805, p. 1507; Acts 1967, No. 410, p. 1049, §11.)*

#### **Section 11-88-3**

##### **Filing of application for incorporation of authority; adoption of resolution approving or denying application by county governing body.**

(a) In order to incorporate an authority under this chapter, any number of natural persons, not less than three, shall first file a written application with the governing body of that county in which the area or areas to be served by the proposed authority is located. Such application shall contain:

(1) A statement that the authority proposes to render water service, sewer service, and fire protection service, or any one or more thereof;

(2) A concise legal description of the area or areas in which the authority proposes to render water service, sewer service, and fire protection service, or any thereof;

(3) A statement that there is no public water system adequate to serve any area in which it is proposed that the authority will render water service, that there is no public sewer system adequate to serve any area in which it is proposed that the authority will render sewer service, and that there are no public fire protection facilities adequate to serve any area in which it is proposed that the authority will render fire

protection service; provided, that in lieu of the statement required by the foregoing provisions of this subdivision, the said application may state that the board of directors or similar governing or managing body of the owner of the legal or equitable title to an existing public water system, public sewer system, or public fire protection facility, as the case may be, has adopted a resolution either (i) declaring its intention to convey to the authority its interest in such existing system or facility, or both, or a leasehold estate therein, or (ii) consenting to the incorporation of the authority and its proposed service area;

(4) A statement that the establishment of an adequate water system, adequate sewer system, and adequate fire protection facility, or any thereof, will promote the public health, convenience, and welfare;

(5) A statement, that each of the applicants is a resident of and owner of real property in the area or areas of the county in which the authority proposes to render water service, sewer service, and fire protection service, or any thereof, and that each of them is a duly qualified elector of said county; and

(6) A request that the said governing body adopt a resolution declaring that it has reviewed the contents of the application and has found and determined as a matter of fact that the statements contained in the application are true.

The proposed service area described in any such application shall lie wholly within the boundaries of the county with whose governing body the application is filed and may lie either within or without or partly within and partly without the boundaries of any municipality in the said county. Every such application shall be accompanied by such supporting documents or evidence as the applicants may consider appropriate.

(b) As promptly as may be practicable after the filing of the application with it pursuant to the provisions of subsection (a) of this section, the governing body with which the application was filed shall review the contents of the application and shall find and determine whether the statements contained in the application are true. If said governing body finds and determines that the said statements are not true, it shall deny the application, but if it finds and determines that the said statements are true, the said governing body shall adopt a resolution declaring that it has reviewed the contents of the application and has found and determined as a matter of fact that the statements in the application are true. In determining whether the statements in the application are true, the governing body with whom such application is filed may, without any investigation or further consideration, assume that the statement therein made pursuant to the provisions of subdivision (1) of subsection (a) of this section is true and may, without any investigation or further consideration, so find and determine in such resolution.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §3; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §2; Acts 1982, 2nd Ex. Sess., No. 82-761, p. 232, §1.)*

#### **Section 11-88-4**

**Filing of certificate of incorporation, copy of resolution of county governing body, etc., with probate judge; contents and execution of certificate of incorporation; entry of order by probate judge requiring recordation of certificate of incorporation, etc.; notification of Secretary of State of recordation of certificate of incorporation.**

(a) Within 40 days following the adoption of a resolution in accordance with Section 11-88-3, the applicants, or not less than three of the applicants, shall proceed to incorporate an authority by filing for record in the office of the judge of probate of the determining county a certificate of incorporation which shall comply in form and substance with the requirements of this section and which shall be in the form and executed in the manner provided in this section.

(b) The certificate of incorporation of the authority shall state:

(1) The names of the persons forming the authority, together with the residence of each, and that each of them is a resident of and an owner of real property in the area of the determining county in which the authority proposes to render water service, sewer service, and fire protection service, or any thereof, and that each of them is a duly qualified elector of said county;

(2) The name of the authority (which shall include the words "water authority," "water and fire protection authority," "fire protection authority," "sewer authority," "water and sewer authority," "water, sewer, and fire protection authority," "fire protection and sewer authority," or as may be appropriate);

(3) The period for the duration of the authority (if the duration is to be perpetual, subject to the provisions of Section 11-88-18, that fact shall be stated);

(4) The name of the determining county, together with the date on which the governing body thereof adopted the resolution in accordance with Section 11-88-3;

(5) The location of the principal office of the authority, which shall be in the determining county;

(6) A concise legal description of the area or areas in which the authority proposes to render water service, sewer service, and fire protection service, or any thereof; and

(7) Any other matters relating to the authority that the incorporators may choose to insert and that are not inconsistent with this article or with the laws of the state.

(c) The certificate of incorporation shall be signed and acknowledged by the incorporators before an officer authorized by the laws of the state to take acknowledgments to deeds.

(d) When the certificate of incorporation is filed for record, there shall be attached to it a certified copy of the resolution adopted by the governing body of the determining county in accordance with Section 11-88-3 and a certificate by the Secretary of State that the name proposed for the authority is not identical to that of any other corporation organized under the laws of the state or so nearly similar thereto as to lead to confusion and uncertainty.

(e) The judge of probate shall promptly examine all such documents and shall determine whether they are complete and regular on their face and whether the form and contents of the certificate of incorporation comply with the provisions of this article. If the judge of probate shall find that all such documents are complete and regular on their face and that the form and contents of the certificate of incorporation comply with the provisions of this article, he shall enter and sign an order setting forth his findings and requiring all such documents to be recorded, together with his order. Upon the filing for record of the said order and the documents referred to therein, the authority shall come into existence and shall constitute a public corporation under the name set forth in said certificate of incorporation.



(f) The judge of probate shall thereupon send a notice to the Secretary of State that the certificate of incorporation of the authority has been filed for record.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §4; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §3.)*

#### **Section 11-88-5**

#### **Authorization and procedure for amendment of certificate of incorporation.**

(a) The certificate of incorporation of any authority incorporated under the provisions of this article may at any time and from time to time be amended in the manner provided in this section.

(b)(1) The board of directors of the authority shall first adopt a resolution proposing an amendment to the certificate of incorporation which shall be set forth in full in the said resolution and which amendment may include:

- a. A change in the name of the authority;
- b. The addition to the service area of the authority of new territory lying within the determining county;
- c. Provisions for the operation of a system or facility the operation of which is not then provided for in the certificate of incorporation of the authority and which the authority is authorized by this article to operate;
- d. Any matters which might have been included in the original certificate of incorporation;
- e. Provisions for the addition to the service area of the authority of new territory lying outside the determining county, together with the related provisions referred to in paragraphs a, b, c, and d of subdivision (2) of this subsection; and
- f. With respect to an authority with a service area that lies solely within one determining county, provisions for a change in the number of directors to any odd number thereof that the board deems appropriate; provided, however, in no case shall the total number of directors be less than three or more than five which provision may also provide for staggering the terms of office of any new directors in the manner contemplated by Section 11-88-6.

(2) If any proposed amendment would add to the service area of the authority new territory any part of which lies within any county other than the determining county, such proposed amendment shall include, in addition to a concise legal description of the proposed new territory and any other matters permitted by the foregoing provisions of subdivision (1) of this subsection:

- a. Provision for election of at least one director by the governing body of each county in which any part of the proposed new territory lies;
- b. Provision for any change in the total number of directors that the board deems appropriate; provided, however, that in no case shall such total number of directors be less than three;



c. Provision for staggering the terms of office of the directors in the manner contemplated by Section 11-88-6; and

d. Any provision that the board deems appropriate for allocation of the assets of the authority, upon dissolution, among the counties in which the service area lies.

(3) If the proposed amendment makes provision for the operation of a system or facility not then provided for in the certificate of incorporation of the authority, such proposed amendment shall include, in addition to a concise legal description of the area or areas in which the authority proposes to render service from such system or facility (which such area or areas shall lie wholly within the boundaries of the determining county and may lie either within or without or partly within and partly without the boundaries of any municipality in the determining county), a provision for an appropriate change in the name of the authority.

(c) After the adoption by the board of a resolution proposing an amendment to the certificate of incorporation of the authority, the board shall file a written application with the governing body of each county in which any part of the authority's then existing service area lies and with the governing body of each county in which any part of the proposed new territory lies. Such application shall:

(1) State, in the event that it is proposed to make provision for the operation of a system or facility not then provided for in the certificate of incorporation of the authority, that the authority proposes to render service from such a system or facility (which shall be named), contain a concise legal description of the area or areas in which the authority proposes to render the service provided for by such system or facility and state that there is no public water system, public sewer system, or public fire protection facility, as the case may be, adequate to serve any area in which it is proposed that the authority will render such service;

(2) State, in the event that it is proposed to add any new territory to the service area of the authority, that there is no public water system adequate to serve any new territory in which it is proposed that the authority will render water service, that there is no public sewer system adequate to serve any new territory in which it is proposed that the authority will render sewer service, and that there is no public fire protection facility adequate to serve any new territory in which it is proposed that the authority will render fire protection service; provided, that in lieu of the statement required by the foregoing provisions of this subdivision, the said application may state that the board of directors or similar managing body of the owner of the legal or equitable title to an existing public water system, public sewer system, or public fire protection facility, as the case may be, has adopted a resolution declaring its intention to convey to the authority its interest in such existing system or facility, or both, or a leasehold estate therein;

(3) State that the said amendment will promote the public health, convenience and welfare; and

(4) Request each governing body with which the application is filed to adopt a resolution declaring that it has reviewed the contents of the application and has found and determined as a matter of fact that the statements contained in the application are true.

Every such application shall be accompanied by a certified copy of the said resolution adopted by the board proposing the said amendment to the certificate of incorporation, together with such documents in support of the application as the board may consider appropriate.

(d) As promptly as may be practicable after the filing of the said application with any governing body pursuant to the foregoing provisions of subsection (c) of this section, that governing body shall review the said application and shall find and determine whether the statements in the said application are true. In finding and determining whether said amendment would promote the public health, convenience, and welfare, the said governing body may consider, in conjunction with any other factors it may deem relevant, the desirability of alternative means of furnishing any proposed new territory with water service, sewer service, and fire protection service, or any thereof. If the said governing body finds and determines that the statements in the said application are true, it shall adopt a resolution declaring that it has reviewed the said application and has found and determined as a matter of fact that the statements in the said application are true. If the said governing body finds and determines that the statements in the said application are not true, it shall deny the application. In the event that any such application shows that the authority proposes to make provision for the operation of a system or facility not then provided for in its certificate of incorporation, any governing body with whom such application is filed may, without any investigation or further consideration, assume that any statement therein that the authority proposes to render service from such a new system or facility is true and may, without any investigation or further consideration, so find and determine in such resolution.

(e) Within 40 days following the adoption by the governing body with which the said application shall have been filed of a resolution declaring the statements in the said application to be true (or, in the event said application was filed with the governing body of more than one county, within 40 days following the adoption of such a resolution by that governing body that was the last to adopt such a resolution, but if and only if the governing body of each other county with whom such application was filed has theretofore adopted such a resolution), the chairman of the board or other chief executive officer of the authority and the secretary of the authority shall sign and file for record in the office of the judge of probate of the determining county a certificate in the name of and in behalf of the authority, under its seal, reciting the adoption of said respective resolution by the board and by each of the said governing bodies and setting forth the said proposed amendment. If the proposed amendment provides for a change in the name of the authority, there shall be filed, together with the certificate required by the immediately preceding sentence, a certificate by the Secretary of State showing that the proposed new name of the authority is not identical to that of any other corporation then in existence and organized under the laws of this state or so nearly similar to that of any other such corporation as to lead to confusion and uncertainty.

(f) The judge of probate shall promptly examine each such certificate and shall determine whether it is complete and regular on its face and whether the proposed amendment complies with the provisions of this article. If the judge of probate shall find that each such certificate is complete and regular on its face and that the proposed amendment complies with the provisions of this article, he shall enter and sign an order setting forth his finding and requiring each such certificate to be recorded, together with his order. Upon the filing for record of the said order and each such certificate, the said amendment to the certificate of incorporation shall become effective.

(g) If the proposed amendment effects a change in the name of the authority, the judge of probate shall promptly send a notice to the Secretary of State, advising him of such change.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §5; Acts 1967, No. 410, p. 1049, §4; Acts 1991, No. 91-599, p. 1102, §1.)*

### **Section 11-88-5.1**

#### **Ratification of amendment.**

Any action heretofore taken and approved by a majority vote of the board of directors of any water, sewer, or fire protection authority, and found and determined to be true by the governing body of each county in which any part of the said authority's then existing service area lies, providing for an amendment to the authority's certificate of incorporation increasing the number of members of said authority's board of directors, is hereby authorized, ratified, and confirmed regardless of any defects, mistakes, errors, or ambiguities in the authorization thereof or in the provisions of law respecting amendments to certificates of incorporation of water, sewer, and fire protection authorities.

*(Acts 1991, No. 91-599, p. 1102, §3.)*

### **Section 11-88-6**

#### **Board of directors.**

(a) Each authority shall be governed by a board of directors. All powers of the authority shall be exercised by the board or pursuant to its authorization.

(b) The board shall consist initially of three directors, elected, as soon as may be practicable after the organization of the authority, by the governing body of the determining county for staggered terms as follows: The first term of one director shall begin immediately upon the director's election and shall end at noon on March 1 of the next succeeding odd-numbered calendar year following the election; the first term of another director shall begin immediately upon his or her election and shall end at noon on March 1 of the second succeeding odd-numbered calendar year following the election; and the first term of the remaining director shall begin immediately upon his or her election and shall end at noon on March 1 of the third succeeding odd-numbered calendar year following the election. Thereafter, the term of office of each director shall be six years.

(c) If any amendment to the certificate of incorporation of the authority, effected pursuant to the provisions of Section 11-88-5, shall increase the membership of the board, the board shall thereafter consist of such number of directors, elected by such governing bodies, as may be specified in the amendment. The terms of office of any new directors added by any such amendment shall be so arranged that, taking into consideration the terms of office of the original three directors, the terms of office of approximately one-third of all directors (or as nearly one-third thereof as may be practicable) will end at noon on March 1 in each odd-numbered year following the effective date of the amendment. The term of office of each new director, added by amendment as aforesaid, shall following the initial term of such new director be for a period of six years. If at any time there should be a vacancy on the board, a successor director to serve for the unexpired term applicable to such vacancy shall be elected by that governing body which elected the director whose unexpired term he or she is to fill. Each election of a director, whether for a full six-year term or to complete an unexpired term, shall be made not earlier than 30 days prior to the date on which such director is to take office as such. No officer of the state or of any county or municipality shall, during his or her tenure as such officer, be eligible to serve as a director.

(d) Each director elected by a county governing body shall be a duly qualified elector of that county and shall be a resident of and the owner of real property in that part of the service area of the authority which lies within that county. Directors shall be eligible for reelection. Each director shall be reimbursed for expenses actually incurred by the director in and about the performance of the director's duties. If the certificate of incorporation so provides, each director except the chairman of the board shall be compensated in an additional amount not to exceed four hundred dollars (\$400) per meeting attended but not to exceed four thousand eight hundred dollars (\$4,800) per year. The chairman shall, if the certificate so provides, be compensated in an additional amount not to exceed six hundred dollars (\$600) per meeting attended but not to exceed seven thousand two hundred dollars (\$7,200) per year.

(e) Any director of the authority may be impeached and removed from office in the same manner and on the same grounds provided by Section 175 of the Constitution of Alabama and the general laws of the state for impeachment and removal of the officers mentioned in Section 175.

(f) If the service area, or the greater part thereof, in which an authority is authorized by its certificate of incorporation or any amendment thereto to render water service, fire protection service, sewer service, or any one or more thereof, includes a resort area pursuant to Article 2 of this chapter and the service area is incorporated or annexed into a municipality subsequent to the creation of an authority, and if the municipality has assumed and taken over the fire protection responsibility and the sewer service originally placed upon the authority, the board of directors of the authority shall be increased in membership by a sufficient number of new members to increase membership on the board of directors to a maximum of seven members. Each of the new members to the board of directors shall be appointed by the governing body of the municipality by ordinance duly adopted. The first term of each new member so appointed shall be staggered for terms of one, two, three, and four years, as needed. Thereafter, the term of the new members added pursuant to this subsection shall be six years. The governing body of the determining county shall continue to make appointments and fill vacancies as heretofore authorized. After May 18, 1993, the governing body of the municipality shall make appointments and fill vacancies as provided in this subsection. All members of the board of directors of the authority shall have all the authority, privileges, immunities, and qualifications as provided in this article.

(g) Nothing in this section as amended by Act 2010-580 shall apply to the City of Prichard Water and Sewer Board.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §6; Acts 1986, Ex. Sess., No. 86-717, p. 135; Acts 1989, Ex. Sess., No. 89-994, p. 38; Acts 1993, No. 93-681, p. 1303, §1; Act 2002-254, p. 533, §1; Act 2010-580, p. 1291, §1.)*

#### **Section 11-88-7**

**Powers of authority generally; power of authority to acquire, operate, etc., systems, etc., outside service area; provisions in schedules of rates and charges generally; powers of authority organized to construct and operate sewer system.**

(a) The authority shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

- (1) To have succession by its corporate name for the duration of time (which may be in perpetuity, subject to the provisions of Section 11-88-18) specified in its certificate of incorporation;
- (2) To sue and be sued in its own name in civil actions, except as otherwise provided in this article, and to defend civil actions against it;
- (3) To adopt and make use of a corporate seal and to alter the same at pleasure;
- (4) To adopt and alter bylaws for the regulation and conduct of its affairs and business;
- (5) To acquire, receive, and take, by purchase, gift, lease, devise, or otherwise, and to hold property of every description, real, personal or mixed, whether located in one or more counties and whether located within or outside the service area;
- (6) To make, enter into, and execute such contracts, agreements, leases, and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the authority was organized or to exercise any power expressly granted under this section;
- (7) To plan, establish, develop, acquire, purchase, lease, construct, reconstruct, enlarge, improve, maintain, equip, and operate water systems, sewer systems, and fire protection facilities, or any part or combination of any thereof, whether located in one or more counties and whether located within or outside the service area, and to acquire real and personal property, franchises, and easements deemed necessary or desirable in connection therewith;
- (8) To distribute and sell water, either at retail or for resale, within the service area or in any part thereof upon such reasonable terms and for such reasonable rates and consideration as the board may prescribe;
- (9) To furnish and provide sewer service in the service area or in any part thereof upon such reasonable terms and for such reasonable rates and considerations as the board may prescribe;
- (10) To furnish and provide fire protection service in the service area or in any part thereof upon such reasonable terms and for such reasonable rates and consideration as the board may prescribe;
- (11) To sell and issue bonds of the authority in order to provide funds for any corporate function, use, or purpose, any such bonds to be payable solely out of the revenues derived from any water system, sewer system, and fire protection facility, or any thereof of the authority;
- (12) To assume obligations secured by a lien on or payable out of or secured by a pledge of the revenues from any water system, sewer system, and fire protection facility, or part of any thereof, that may be acquired by the authority, any obligation so assumed to be payable by the authority solely out of the revenues derived from the operation of any water system, sewer system, and fire protection facility, or any thereof of the authority;
- (13) To pledge for payment of any bonds issued or obligations assumed by the authority any revenues from which those bonds or obligations are made payable as provided in this article;
- (14) To execute and deliver, pursuant to the provisions of this section and of Sections 11-88-8 and 11-88-9, mortgages and deeds of trust and trust indentures or either;

(15) To exercise the power of eminent domain in the manner provided in and subject to the provisions of Title 18, as amended; provided, however, that this subdivision shall not be deemed to authorize the authority to acquire, without the consent of the owner or owners thereof, any water supply system or water distribution system from which water service is at the time being furnished, any sewer system from which sewer service is at the time being furnished, or any property that is at the time being used in the furnishing of fire protection service;

(16) To appoint, employ, contract with and provide for the compensation of such officers, employees, and agents, including, but without limitation to, engineers, attorneys, management consultants, and fiscal advisers, as the business of the authority may require and at its option to provide a system of disability pay, retirement compensation and pensions, or any of them without regard to any provisions of Sections 41-16-50 through 41-16-63 that might otherwise be applicable;

(17) To make and enforce reasonable rules and regulations governing the use of any water system, sewer system, or fire protection facility owned or controlled by the authority;

(18) To provide for such insurance as the board may deem advisable;

(19) To invest any funds of the authority that the board may determine are not presently needed in the operation of its properties in bonds of the United States of America, bonds of the state, bonds of any county or municipality and interest bearing bank deposits or any thereof;

(20) To cooperate with the United States of America, any agency or instrumentality thereof, the state, any county, municipality, or other political subdivision of the state and any public corporation organized under the laws of the state and to make such contracts with them or any of them as the board may deem advisable to accomplish the purposes for which the authority was established;

(21) To sell and convey any of its properties that may have become obsolete or worn out or that may no longer be needed or useful as a part of any water system, sewer system, or fire protection facility of the authority;

(22) To sell and convey, with or without valuable consideration, any of its water systems, sewer systems, or fire protection facilities or any portion of any of the said systems and facilities to any one or more counties, municipalities, or public corporations organized under the laws of the state which have the corporate power to operate the system and facilities or portions thereof so conveyed and the property and income of which are not subject to taxation; provided, that any such sale and conveyance may be made only with the consent of each county in which any part of the service area of the authority is then located, such consent to be evidenced by a resolution adopted by the governing body of each consenting county, and only if any such conveyance would not constitute a breach of any then outstanding mortgage and deed of trust, trust indenture or other agreement to which the authority is a party;

(23) To enter into a management agreement or agreements with any person for the management by the authority of any water system, sewer system, or fire protection facility, or any thereof, upon such terms and conditions as may be mutually agreeable; and

(24) To fix and revise from time to time reasonable rates, fees, and other charges for water service, sewer service, and fire protection service or any thereof furnished or to be furnished by any water



system, sewer system, or fire protection facility or portion of any thereof owned or operated by the authority and to collect all charges made by it.

(b) Nothing in this section shall be construed to permit an authority to acquire, receive, take, hold, establish, develop, construct, reconstruct, enlarge, improve, maintain, equip, or operate any property or water system, sewer system, and fire protection facility, or any part or combination of any thereof, located outside the service area, except as an incident to the rendering of water service, sewer service, and fire protection service, or any thereof inside the service area.

(c) Any schedule or schedules of rates and other charges adopted by the board may:

(1) Provide for the rendition by the authority to customers served by it of combined statements or bills for service furnished from its water systems, its sewer systems, and its fire protection facilities, or any one or more of any thereof;

(2) Permit the authority to decline to accept payment of charges for service from any of its said systems and facilities, without payment of charges for service at the same premises from any one or more of its other systems and facilities;

(3) Provide for a discontinuance of service from any or all of its said systems and facilities at any premises with respect to which there is a delinquency in the payment of charges for service from any system or facility of the authority;

(4) Provide for the payment of connection fees, disconnection fees, and reconnection fees; and

(5) Require, as a prerequisite to the rendition of any service, the making of a deposit as security for payment of bills, on which deposit the authority shall not be obligated to pay or allow interest.

(d) Any authority organized under this article for the purpose of constructing and operating a sewer system, either separately or in combination with a water system or fire protection facility, or both, shall have all of the powers and authority set forth in this section, either separately or in combination with any other system, service, or facility referred to in this section.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §7; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §5.)*

#### **Section 11-88-7.1**

#### **Additional powers.**

(a) Any authority organized or operating pursuant to Chapter 88 of Title 11 shall, in addition to all other powers now or hereafter granted by law, have the following powers and rights:

(1) To borrow money for temporary use for any of its corporate purposes and, in evidence of such borrowing, to issue from time to time revenue bonds or notes maturing not later than 36 months from the date of issuance. Any such temporary borrowing may be made in anticipation of the sale and issuance of long-term revenue bonds, and in such event, the principal proceeds from the sale of such long-term



revenue bonds shall, to the extent necessary, be used for payment of the principal of and the interest on the temporary revenue bonds or notes issued in anticipation of the sale and issuance of such long-term revenue bonds. Any such temporary borrowing may also be made with respect to a project simultaneously with or after the sale and issuance of long-term revenue bonds issued with respect to such project if, under the terms of the proceedings under which such long-term revenue bonds are issued, the proceeds therefrom or any part thereof may not be used or released until completion of the project with respect to which issued or other similar contingency. In such case, the principal proceeds from the long-term revenue bonds shall, when released and to the extent necessary, be applied for payment of the temporary bonds or notes. Any temporary bonds or notes issued pursuant to this paragraph may be refunded or renewed or extended for an additional period of not more than 36 months from the date of maturity of the temporary bonds or notes being refunded or renewed or extended, but otherwise pursuant to all of the terms and conditions of this paragraph, whether or not the project with respect to which the outstanding temporary revenue bonds or notes were issued has been completed.

(2) To sell, transfer, convey, grant options to purchase, or lease all or any part of its system or systems for such consideration and on such terms as it shall deem advisable and in the best interest of the authority.

(3) To consent and agree to the assignment or payment of any income received from the investment of any moneys of funds of the authority or representing the proceeds of its bonds or notes to any other public corporation or public entity, including, without limitation, the determining county (as defined in Section 11-88-1) or the State of Alabama.

(4) To loan or advance its funds, including the proceeds of its bonds, to any person (as defined in Section 11-88-1) at such, if any, interest as it shall determine, for the purpose of financing the construction of a system or any part thereof.

(5) To contract with others for the construction of all or any part of a system or systems or any part thereof.

(b) The proceeds of any bond issued by an authority and moneys held in any special fund established by an authority in connection with the issuance of any of its bonds may be invested in any direct obligations of the United States of America, the obligations of any agency of the United States of America, interest bearing bank deposits, or in any securities the payment of the principal of and interest on which is fully secured by direct obligations of the United States of America.

(c) An authority shall be under no obligation to render service to the citizens of any municipality which shall not have granted the authority and those claiming under it a franchise for any system of the authority within such municipality without payment of any fee, charge or cost other than the cost of publication of the ordinance granting the franchise.

(d) Any transaction to which an authority or a determining county (as defined in Section 11-88-1) is a party shall be exempt from any tax levied pursuant to Article 4 of Chapter 12 of Title 40 or any tax levied in substitution therefor or in lieu thereof.

(e) Any water system, sewer system or fire protection facility or any part thereof leased or subleased to, or operated or managed by, any determining county (as defined in Section 11-88-1), whether the lease or sublease be by the authority or any private party, including without limitation corporations or

partnerships, shall be exempt from all state, county and other taxes, including without limitation ad valorem taxes, regardless of the entity that shall hold the legal title to such system or facility or any part thereof or any remainder or reversionary interest therein.

(f) Any determining county (as defined in Section 11-88-1) may acquire by lease or sublease any property comprising all or any part of a water system, sewer system or fire protection facility from an authority or from any vendee or lessee or sublessee of an authority, or may manage or operate the same, having all rights of an authority with respect thereto.

*(Acts 1982, 2nd Ex. Sess., No. 82-767, p. 243.)*

#### **Section 11-88-8**

**Bonds of authority - Form, terms, denominations, etc.; sale; execution and delivery; refunding; liability thereon; security for payment of principal and interest and payment thereof generally; provisions in mortgages, deeds of trust or trust indentures executed as security for payment of bonds generally.**

All bonds issued by the authority shall be signed by the chairman of its board or other chief executive officer and attested by its secretary and the seal of the authority shall be affixed thereto, and any interest coupons applicable to the bonds of the authority shall be signed by the chairman of its board or other chief executive officer; provided, that a facsimile of the signature of one, but not both, of said officers may be printed or otherwise reproduced on any such bonds in lieu of his manually signing the same, a facsimile of the seal of the authority may be printed or otherwise reproduced on any such bonds in lieu of being manually affixed thereto and a facsimile of the signature of the chairman of its board or other chief executive officer may be printed or otherwise reproduced on any such interest coupons in lieu of his manually signing the same.

Any such bonds may be executed and delivered by the authority at any time and from time to time, shall be in such form and denominations and of such tenor and maturities, shall contain such provisions not inconsistent with the provisions of this article and shall bear such rate or rates of interest, or no interest, computed, compounded (if determined by the board to be advantageous), payable at such time or times, and evidenced in such manner, as may be provided by resolution of its board. Bonds of the authority may be sold at either public or private sale in such manner and at such price or prices and at such time or times as may be determined by the board to be most advantageous. The principal of and interest on any bonds issued or obligations assumed by the authority may thereafter at any time (whether before, at or after maturity of any such principal and whether at, after or not exceeding six months prior to the maturity of any such interest) and from time to time be refunded by the issuance of refunding bonds of the authority, which may be sold by the authority at public or private sale at such price or prices as may be determined by its board to be most advantageous or which may be exchanged for the bonds or other obligations to be refunded. The authority may pay all expenses, premiums and commissions which its board may deem necessary and advantageous in connection with any financing done by it. All bonds issued by the authority shall be construed to be negotiable instruments although payable solely from a specified source.

All obligations created or assumed and all bonds issued or assumed by the authority shall be solely and exclusively an obligation of the authority and shall not create an obligation or debt of any county or municipality; provided, that the provisions of this sentence shall not be construed to release the original obligor from liability on any bond or other obligation assumed by the authority.

Any bonds issued by the authority shall be limited or special obligations of the authority payable solely out of the revenues of the authority specified in the proceedings authorizing those bonds. Any such proceedings may provide that the bonds therein authorized shall be payable solely out of the revenues derived from the leasing, sale or operation of all water systems, sewer systems, and fire protection facilities owned by the authority or solely out of the revenues from the leasing, sale or operation of any one or more of such system or facilities or parts thereof, regardless of the fact that those bonds may have been issued with respect to or for the benefit of only certain particular systems or facilities of the authority.

The authority may pledge for the payment of any of its bonds the revenues from which such bonds are payable and may execute and deliver a trust indenture evidencing any such pledge or a mortgage and deed of trust conveying as security for such bonds the water systems, sewer systems or the fire protection facilities or any part of any thereof, the revenues or any part of the revenues from which are so pledged. Any mortgage and deed of trust or trust indenture made by the authority may contain such agreements as the board may deem advisable respecting the operation and maintenance of the property and the use of the revenues subject to such mortgage and deed of trust or affected by such trust indenture and respecting the rights, duties and remedies of the parties to any such instrument and the parties for the benefit of whom such instrument is made; provided, that no such instrument shall be subject to foreclosure.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §9; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §7; Acts 1982, 2nd Ex. Sess., No. 82-761, p. 232, §2.)*

#### **Section 11-88-9**

#### **Bonds of authority - Contracts to secure payment of principal and interest.**

As security for payment of the principal of and interest on bonds issued or obligations assumed by it, the authority may enter into a contract or contracts binding itself for the proper application of the proceeds of bonds and other funds, for the continued operation and maintenance of any water system, sewer system or fire protection facility owned by it or any part or parts thereof, for the imposition and collection of reasonable rates for and the promulgation of reasonable regulations respecting any service furnished from such system or facility, for the disposition and application of its gross revenues or any part thereof and for any other act or series of acts not inconsistent with the provisions of this article for the protection of the bonds and other obligations being secured and the assurance that the revenues from such system or facility will be sufficient to operate such system or facility, maintain the same in good repair and in good operating condition, pay the principal of and interest on any bonds payable from such revenues and maintain such reserves as may be deemed appropriate for the protection of the bonds, the efficient operation of such system or facility and the making of replacements thereof and capital improvements thereto.

Any contract pursuant to the provisions of this section may be set forth in any resolution of the board authorizing the issuance of bonds or the assumption of obligations or in any mortgage and deed of trust or trust indenture made by the authority under this article.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §10; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §8.)*

#### **Section 11-88-10**

##### **Bonds of authority - Statutory mortgage lien to secure payment of principal and interest.**

Any resolution of the board or trust indenture under which bonds may be issued pursuant to the provisions of this article may contain provisions creating a statutory mortgage lien, in favor of the holders of such bonds and of the interest coupons applicable thereto, on the water systems, sewer systems and fire protection facilities or any thereof (including any after-acquired property) out of the revenues from which such bonds are made payable. The said resolution of the board or the said trust indenture may provide for the filing for record in the office of the judge of probate of each county in which any part of such water systems, sewer systems and fire protection facilities or any thereof may be located of a notice containing a brief description of such systems and facilities or either, a brief description of such bonds and a declaration that said statutory mortgage lien has been created for the benefit of the holders of such bonds and the interest coupons applicable thereto upon such systems and facilities or either, including any additions thereto and extensions thereof. Each judge of probate shall receive, record and index any such notice filed for record in his office. The recording of such notice, as provided in this section, shall operate as constructive notice of the contents thereof.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §11; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §9.)*

#### **Section 11-88-11**

##### **Bonds of authority - Disposition of proceeds from sale of bonds.**

All moneys derived from the sale of any bonds issued by the authority shall be used solely for the purpose or purposes for which the same are authorized, including the funding of all or part of any reserve funds which may be required for debt service, replacement and extension or capital improvements, and any costs and expenses incidental thereto. Such costs and expenses may include but shall not be limited to:

- (1) The fiscal, engineering, legal and other expenses incurred in connection with the issuance of and security for the bonds, including, without limitation, the charges, premiums or fees in connection with any debt service insurance or letter of credit or other additional security given with respect to its bonds, whether such amounts are to be paid in a lump sum or over a period of time;
- (2) Interest on bonds in the case of bonds issued to pay costs of construction or, if a part only of any series of bonds is issued for construction purposes, interest on that portion of the bonds of that series that

is issued to pay construction costs prior to and during such construction and for not exceeding one year after completion of such construction; and

(3) Any premium that it may be necessary to pay in order to redeem or retire the bonds or other obligations to be refunded in the case of bonds issued for the purpose of refunding principal and interest, or either, with respect to bonds issued or obligations assumed by the authority.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §12; Acts 1982, 2nd Ex. Sess., No. 82-761, p. 232, §3.)*

#### **Section 11-88-12**

##### **Establishment and revision of rates, fees, and charges for services rendered by authority; applicability of provisions of section to authority organized to construct and operate sewer system.**

(a) Rates, fees, and charges for water service, sewer service, and fire protection service rendered by the authority from any of its water systems, sewer systems, or fire protection facilities shall be so fixed and from time to time revised as at all times to provide funds at least sufficient to:

(1) Pay the cost of operating, maintaining, repairing, replacing, extending and improving the systems and facilities, or either, from which such services are rendered;

(2) Pay the principal of and the interest on all bonds issued and obligations assumed by the authority that are payable out of the revenues derived from operation of those systems and facilities as the said principal and interest become due and payable;

(3) Create and maintain such reserves for the foregoing purposes or any of them as may be provided in any mortgage and deed of trust or trust indenture executed by the authority under this article or in any resolutions of the board authorizing the issuance of bonds, the assumption of any obligation, or the acquisition of any such system or facility; and

(4) Make such annual payments, if any, to the United States of America or any agency or instrumentality thereof, the state, municipalities, counties, departments, authorities, agencies, and political subdivisions of the state and any public corporations organized under the laws of the state as the authority may have contracted to make.

(b) The provisions of subsection (a) of this section shall apply to any authority organized under this article for the purpose of constructing and operating a sewer system, either separately or in combination with a water system or fire protection facility or both.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §8; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §6.)*

#### **Section 11-88-13**

**Loans, sales, grants, etc., of money, property, etc., to authority by counties, municipalities, public corporations, etc.**

For the purpose of securing water service, sewer service, or fire protection service or aiding or cooperating with the authority in the planning, development, undertaking, construction, extension, improvement, operation, or protection of water systems, sewer systems, and fire protection facilities, any county, municipality, or other political subdivision, public corporation, agency, or instrumentality of this state may, upon such terms and with or without consideration, as it may determine:

- (1) Lend or donate money to or perform services for the benefit of the authority;
- (2) Donate, sell, convey, transfer, lease or grant to the authority, without the necessity of authorization at any election of qualified voters, any property of any kind, including, but without limitation, any water system, sewer system, or fire protection facility, any interest in any thereof and any franchise; and
- (3) Do any and all things, whether or not specifically authorized in this section, not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of water systems, sewer systems, and fire protection facilities.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §13; Acts 1966, Ex. Sess., No. 436, p. 581; Acts 1967, No. 410, p. 1049, §10.)*

**Section 11-88-14**

**Use by authority of public roads rights-of-way.**

Each authority is authorized to use the rights-of-way of all public roads in the state subject only to the necessity of obtaining the municipal consent required by Section 220 of the Constitution of Alabama of 1901, or the consent from the county governing body subject to uniform regulations applying to both counties and authorities authorized under this chapter established by resolution of the county governing body and delivered to each authority operating within the county or an adjoining county by registered mail within 10 days of adoption by the county governing body; provided, that nothing in this section shall be construed to exempt any authority from the requirements of Section 23-1-4 or Sections 37-15-1 to 37-15-11, inclusive; provided further, that the said authority shall have the duty to restore to pre-use condition and at its expense all roads, highways, and public rights-of-way in which it may have made excavations or done other work in laying pipes or performing any of its other corporate functions and post a bond in the amount required to restore to said condition as determined by the county engineer. This section shall only apply to water, sewer, and fire protection authorities governed by this article.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §17; Act 2000-152, p. 215, §1.)*

**Section 11-88-15**

**Furnishing of fire protection service by authority declared governmental function; immunity from tort liability of authority.**

The furnishing of fire protection service by an authority is hereby declared to be a governmental function.

The authority shall not be liable for any tort, whether negligent or wilful, committed by any director, agent, servant, or employee of the authority in the furnishing of fire protection service or in the construction, maintenance, or operation of any fire protection facility.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §14.)*

#### **Section 11-88-15.1**

##### **Soliciting contributions for local volunteer fire departments; monthly usage estimates.**

(a) County water systems incorporated pursuant to this chapter or other portions of this title and municipal water systems incorporated pursuant to Chapter 50 or other portions of this title are expressly authorized to solicit their customers, through monthly or other periodic billings for water services, for voluntary contributions for local volunteer fire departments, provided the board of directors of the system has first adopted a resolution approving the participation in the solicitation authorized by this section, and have established a minimum amount for the checkoff. County and municipal water systems that are granted permission to participate may provide for one or more customer checkoffs on their billings as a method for soliciting such voluntary contributions. Participating county and municipal water systems shall distribute such contributions to the volunteer fire departments as indicated by the customers within 30 days of receipt of such contributions.

(b) Each volunteer fire department receiving water from a water system for firefighting and training purposes shall provide monthly estimates of the amount of water used during the previous month to the system that provides the water.

*(Act 2006-203, p. 301, §§1, 2.)*

#### **Section 11-88-16**

##### **Exemption from taxation of authority and property, leases, bonds, etc., thereof; payment of fees, taxes, or costs to probate judge for incorporation, etc.; imposition of license or excise tax upon authority.**

The authority, the property and income of the authority, all bonds issued by the authority, the income from such bonds, conveyances by or to the authority and leases, mortgages, and deeds of trust by or to the authority shall be exempt from all taxation in the State of Alabama.

The authority shall not be obligated to pay or allow any fees, taxes, or costs to the judge of probate of any county in respect of its incorporation, the amendment of its certificate of incorporation, or the recording of any document.



No license or excise tax may be imposed on any authority in respect of the privilege of engaging in any of the activities authorized by this chapter.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §15.)*

#### **Section 11-88-17**

##### **Exemption of authority from usury laws, etc.**

Each authority now or hereafter organized under the provisions of this article is hereby exempted from the laws of the State of Alabama governing usury and prescribing or limiting interest rates, including, without limitation, the provisions of Chapter 8 of Title 8.

*(Acts 1971, 3rd Ex. Sess., No. 169, p. 4419.)*

#### **Section 11-88-18**

##### **Authorization and procedure for dissolution of authority; vesting of title to properties of authority and apportionment thereof upon dissolution of authority.**

At any time when no bonds theretofore issued by the authority or obligations theretofore assumed by the authority are outstanding, the board may adopt a resolution, which shall be duly entered upon its minutes, declaring that the authority shall be dissolved. Upon the filing for record of a certified copy of the said resolution in the office of the judge of probate of the determining county, the authority shall thereupon stand dissolved and, in the event it owned any property at the time of its dissolution, the title to all its properties shall thereupon pass to and be divided and apportioned among the determining county and any other county or counties in which any part of the service area may be located, all in such manner and to such extent as may be provided in the authority's certificate of incorporation, as amended; provided, however, that in the absence of a contrary provision in the said certificate of incorporation, as amended, title to real estate and tangible personal property, other than cash, shall vest in the county in which the said real estate or tangible personal property is located and the title to cash on hand and in banks, accounts receivable, choses in action, and other intangible property, other than intangible interest in land, shall vest in all of the counties in which any part of the service area lies. Each such county shall have title to said cash and intangible items as a tenant in common thereof, the fractional interest of each such tenant in common in said items being represented by a fraction the numerator of which is an amount equal to the gross revenues derived by the authority during its then next preceding complete fiscal year from service rendered in that part of its service area within that county and the denominator of which is an amount equal to the gross revenues derived by the authority during the same period from services rendered in its entire service area.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §18.)*

### **Section 11-88-19**

#### **Existence of authority not to prevent subsequent incorporation, etc., of another authority.**

The existence of one or more authorities incorporated under the provisions of this article shall not prevent the subsequent incorporation under this article of another authority or the amendment of the certificate of incorporation of another authority pursuant to determinations made by the same county or counties, even though the service area described in the certificate of incorporation, as originally filed or as amended, of any existing authority may include territory that lies within the proposed service area of an authority that is proposed to be incorporated under this article or that proposes to amend its certificate of incorporation under this article; provided, however, that the provisions of this section shall not be deemed to eliminate the requirements that the statements of fact referred to in subdivision (3) of subsection (a) of Section 11-88-3 and in subdivisions (1) and (2) of subsection (c) of Section 11-88-5 be determined to be true.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §19; Acts 1967, No. 410, p. 1049, §12.)*

### **Section 11-88-20**

#### **Validation of prior defective incorporations under provisions of article.**

In all cases where there has heretofore been an attempt to incorporate a public corporation under the provisions of this article, and a certificate of incorporation with respect to such corporation has been filed in the office of the judge of probate of the county in which such corporation was sought to be incorporated, but the attempted incorporation is invalid because of some irregularity in the procedure followed, the attempted incorporation of such public corporation with respect to which such a certificate of incorporation has been filed shall be and hereby is validated ab initio, notwithstanding any irregularity in the procedure for incorporation of such corporation, including, without limiting the generality of the foregoing:

- (1) The failure of the judge of probate in whose office such certificate of incorporation was filed to examine such certificate of incorporation or to enter an appropriate order with respect thereto;
- (2) The failure of the governing body of the county to whom application was made for the incorporation of such corporation to adopt the resolution required by Section 11-88-3, as amended, or to include in such resolution the appropriate findings;
- (3) The failure of the persons making such application to the county governing body to sign the certificate of incorporation so filed in the office of the judge of probate;
- (4) The fact that the certificate of incorporation so filed was not signed by not less than three of the persons making such application to the county governing body;
- (5) The failure to file the certificate of incorporation within the time specified by statute after adoption by the county governing body of the appropriate resolution;

(6) The failure to attach to the certificate of incorporation any one or more of the documents required to be attached thereto at the time of such incorporation; or

(7) The inclusion in the certificate of incorporation of any matter not authorized to be included therein or contrary to the statutory requirements with respect to such corporation.

*(Acts 1971, No. 610, p. 1326.)*

#### **Section 11-88-21**

**When proceedings, notice, etc., for incorporation of authority, acquisition of property, issuance of bonds, etc., required; exemption of authority, etc., from jurisdiction and regulation of Public Service Commission, etc.**

Except as expressly otherwise provided in this article or Article 2 of this chapter no proceeding, notice, or approval shall be required for the incorporation of any authority or the amendment of its certificate of incorporation, the acquisition of any property, water system, sewer system, or fire protection facility or the issuance of any bonds, mortgage, and deed of trust or trust indenture.

The authority, every water system, sewer system, or fire protection facility owned by the authority or leased or subleased to a determining county and the rates and charges thereof shall be exempt from all jurisdiction of and all regulation and supervision by the Alabama Public Service Commission and neither a public hearing nor the consent of the State Department of Finance shall be prerequisite to the issuance of bonds by the authority or any transaction between the authority and the determining county or between the determining county and any vendor, vendee, lessor, or lessee to or from the authority.

*(Acts 1965, 1st Ex. Sess., No. 107, p. 132, §16; Acts 1965, No. 805, p. 1507; Acts 1967, No. 410, p. 1049, §11; Acts 1982, 2nd Ex. Sess., No. 82-761, p. 232, §4.)*

#### **Section 11-88-132**

**Acquisition, etc., of water system of water and fire protection authority by city board of water and sewer commissioners - Conveyance of funds in trust for authority's fire protection system; governing board of authority as trustees; trustees' powers and liabilities.**

(a) In the event that the board of water and sewer commissioners of any city ("commissioners") should acquire, operate, or control by virtue of assignment, conveyance, court order, operation of law, or otherwise the water system of a water and fire protection authority ("authority"), then the commissioners shall thereupon convey to the authority the principal sum of \$2,000,000 in irrevocable trust for the support and maintenance of the authority's fire protection system.

(b) The trustees of the trust so established shall be the members of the governing board of the authority, as it may be comprised from time to time, who shall have all powers necessary to effect the support and maintenance of the authority's fire protection system, including, but not limited to, the following powers:

- (1) To adopt, alter, and repeal bylaws, regulations, and rules for the regulation and conduct of its affairs and business;
- (2) To make, enter into, and execute contracts, agreements, and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the trust was created or to exercise any power expressly or impliedly needed for the accomplishment of such purpose;
- (3) To appoint, employ, and contract with such employees, agents, advisors, and consultants, including, but not limited to, attorneys, accountants, financial experts, and such other advisors, consultants, and agents as may in its judgment be necessary or desirable, and to fix their compensation;
- (4) To borrow money for expenses or for any other purpose of the trust, and to pledge, mortgage, or otherwise encumber any property of the trust as security for any loans or bond issues of the authority;
- (5) To deduct, retain, expend, and pay out of money belonging to the trust, any and all necessary and proper expenses in connection with the operation and conduct of the trust, and to pay all taxes, insurance premiums, and other legal assessments, debts, claims, or charges which at any time may be due and owing by, or which may exist against, the trust;
- (6) To invest or reinvest the trust property in the following eligible investments:
  - a. Demand deposits (interest bearing) in federally insured banks and interest bearing deposits (whether or not evidenced by certificates of deposit) in federally insured banks; provided, however, that said deposits plus interest shall be fully secured by obligations described in paragraphs b. and c. hereinbelow, to the extent that said deposits plus interest exceed insurance available from the Federal Deposit Insurance Corporation or from any agency of the United States of America that may succeed to the functions of the Federal Deposit Insurance Corporation;
  - b. Bonds, notes, and other evidences of indebtedness that are direct obligations of the United States of America or that are unconditionally guaranteed as to both principal and interest by the United States of America;
  - c. Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any federal agencies or government-sponsored enterprises authorized to issue their own debt instruments, including, without limitations to the following: Federal Farm Credit Bank, Federal Intermediate Credit Banks, the Export-Import Bank of the United States, Federal Land Banks, the Federal National Mortgage Association, the Tennessee Valley Authority, the Governmental National Mortgage Association, the Federal Financing Bank, Federal Banks for Cooperatives, Federal Home Loan Banks, Federal Home and Loan Mortgage Association, or the Farmers Home Administration;
  - d. Repurchase agreements with federally insured banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York, provided that such repurchase agreements are secured by obligations described in paragraphs b. and c. hereinabove;
  - e. Interest bearing time deposits (whether or not evidenced by certificates of deposit) in savings and loan associations (i) the deposits of which are insured to the maximum extent possible by the Federal Savings and Loan Insurance Corporation or any agency of the United States of America that may succeed to its functions and (ii) the principal office of which is located in the state; provided, however, that said

deposits plus interest shall be secured by obligations described in paragraphs b. and c. hereinabove, to the extent that said deposits plus interest exceed insurance available from the Federal Savings and Loan Insurance Corporation or from any agency of the United States of America that may succeed to the functions of the Federal Savings and Loan Insurance Corporation; and

f. Any and all investments authorized under Section 19-3-120.

(7) To apply the net income of the trust property, or such additional sum or sums from or out of the principal of such trust, to expenses for the support and maintenance of the authority's fire protection system as the trustees in their discretion shall deem necessary or appropriate for such purposes.

(8) To do all of the things hereinabove set out and to exercise any other powers and authorities which such trustees generally have, without first obtaining any order of court therefor.

(c) An individual trustee shall not in any way be personally liable for any liability, loss, or expense suffered by the trust fund unless such liability, loss, or expense arises out of or results from the willful misconduct or wrongdoing of such trustee.

*(Acts 1989, No. 89-790, p. 1578, §3.)*

#### **Section 11-89-1**

##### **Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) **APPLICANT.** A natural person who files a written application with the governing body of any county or municipality or public corporation or cooperative in accordance with the provisions of Section 11-89-3.

(2) **AUTHORIZING RESOLUTION.** A resolution, adopted by a governing body in accordance with the provisions of Section 11-89-3, that authorizes the incorporation of a district.

(3) **AUTHORIZING SUBDIVISION.** Any county or municipality or public corporation or cooperative the governing body of which shall have adopted an authorizing resolution.

(4) **BOARD.** The board of directors of a district.

(5) **BONDS.** Bonds, notes and certificates representing an obligation to pay money.

(6) **CONCISE LEGAL DESCRIPTION.** A reasonably concise description of a particular geographic area which may be by metes and bounds or by reference to government surveys, recorded maps and plats, municipal, county or state boundary lines, well-defined landmarks and other monuments, or any combination of the foregoing.

(7) COOPERATIVE. Any corporation organized under Article 9 (commencing with Section 10-4-190) of Chapter 4 of Title 10, or any successor thereto, to render water service or sewer service.

(8) COUNTY. Any county in the state.

(9) DIRECTOR. A member of the board of directors of the district.

(10) DISTRICT. A public corporation organized pursuant to the provisions of this chapter.

(11) FIRE PROTECTION FACILITY. Land, plants, systems, facilities, buildings, fire engines, fire hydrants, ladders, equipment, hoses, alarm apparatus, chemicals, uniforms, supplies or any combination of any thereof used or useful or capable of future use in furnishing fire protection service and all other property deemed necessary or desirable by the district for use in furnishing fire protection service.

(12) FIRE PROTECTION SERVICE. All services involved in protecting property and life from fires, including, but not limited to, discovering, ascertaining, extinguishing, preventing the spread of or fighting fires or inspecting property for fire hazards or any part or combination thereof. The supplying of water for use in the rendition of fire protection service shall be deemed to constitute fire protection service.

(13) GOVERNING BODY. With respect to a county, its county commission, and, with respect to a municipality, its city or town council, board of commissioners or other like governing body and, with respect to a public corporation or a cooperative, its board of directors.

(14) INCORPORATORS. The persons forming a public corporation organized pursuant to the provisions of this chapter.

(15) MUNICIPALITY. An incorporated city or town of the state.

(16) NEW TERRITORY. Any territory added, by amendment to the certificate of incorporation of a district, to the area or areas in which that district is authorized to render water service, fire protection service, sewer service or any thereof.

(17) PERSON. Unless limited to a natural person by the context in which it is used, such term includes a public or private corporation, a municipality, a county, a cooperative, or an agency, department or instrumentality of the state or of a county or municipality or cooperative.

(18) PRINCIPAL OFFICE. The place at which the certificate of incorporation and amendments thereto, the bylaws and the minutes of proceedings of the board of a district are kept.

(19) PROPERTY. Real and personal property and interests therein.

(20) PUBLIC CORPORATION. Any public corporation organized under the laws of the state.

(21) PUBLIC FIRE PROTECTION FACILITY. A fire protection facility which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more

thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(22) **PUBLIC SEWER SYSTEM.** A sewer system which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation, a cooperative, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(23) **PUBLIC WATER SYSTEM.** A water system which is owned or operated by the United States of America, the state, a county, a municipality, a public corporation, a cooperative, any combination of any thereof or any agency or instrumentality of any one or more thereof or in which any one or more thereof or any agency or instrumentality of any one or more thereof holds a reversionary or remainder interest.

(24) **SERVICE AREA.** The geographic area or areas in which a district is authorized by its certificate of incorporation or any amendment thereto to render water service, fire protection service, sewer service or any thereof, which area may include both territory located outside the boundaries of any municipality and territory located within the boundaries of one or more municipalities.

(25) **SEWER SERVICE.** All services involved in collecting, transporting, treating and disposing of sanitary sewage or solid wastes and the performing of all functions and activities reasonably incident to the operation of a sewer system.

(26) **SEWER SYSTEM.** A sanitary sewer system, including mains, laterals, sewage disposal plants and sewage treatment plants and all appurtenances to such a system and all properties, rights, easements and franchises deemed necessary or desirable by the district for use in rendering sewer services. "Sewer system" shall also mean and include land, sanitary landfills, systems, facilities, buildings, trucks, compactors, automobiles, motor vehicles, equipment, incinerators, compost plants, chemicals, uniforms, supplies, offices and office equipment, and any combination of any thereof, and such other real or personal property, rights, easements and franchises as may be deemed necessary or desirable by the district for the collection, transportation, treatment, storage or disposal of solid wastes.

(27) **SOLID WASTES.** All solid wastes and hazardous wastes as the same are defined in Article 1 of Chapter 27 of Title 22.

(28) **STATE.** The State of Alabama.

(29) **SUPPLY DISTRICT.** A district which renders sewer service or water service only to one or more counties, municipalities, or other public corporations, a cooperative, or to one or more customers of a county, municipality, public corporation, or a cooperative at its written request.

(30) **WATER SERVICE.** The providing, furnishing, supplying or distributing of water and the performing of all of the functions and activities reasonably incident to the operation of a water system.

(31) **WATER SYSTEMS.** Land, plants, systems, facilities, buildings and other property or any combination of any thereof which are used or useful or capable of future use in providing, furnishing, supplying or distributing water, including, but not limited to, water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, tanks, filtration plants, purification plants, meters, valves and all necessary appurtenances and equipment and



all properties, rights, easements and franchises deemed necessary or desirable by the district for use in rendering water service.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §1; Acts 1975, 4th Ex. Sess., No. 104, p. 2785, §1; Acts 1976, No. 540, p. 714; Acts 1989, No. 89-745, p. 1494, §1; Acts 1997, No. 97-668, p. 1289, §1.)*

#### **Section 11-89-2**

##### **Purpose of chapter.**

This chapter is intended to aid the state in the execution of its duties by providing appropriate and independent instrumentalities of the state with full and adequate powers to fulfill their functions.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §16.)*

#### **Section 11-89-3**

##### **Filing of application for incorporation of district; adoption of resolutions approving or denying application, etc., by governing bodies.**

(a) In order to incorporate a district under this chapter, any number of natural persons, not less than three, shall first file an identical written application with the governing body of each county and municipality located in whole or in part within the boundaries of the area or areas to be served by the proposed district, or, if the district is to be a supply district, with the governing body of each county, municipality, and public corporation to be served by the proposed district. Such application shall contain:

(1) A statement that the district proposes to render water service, sewer service, and fire protection service or any one or more thereof;

(2)(i) A concise legal description of the area or areas in which the district proposes to render water service, sewer service, and fire protection service or any thereof, a designation of the type or types of service proposed to be rendered in such area or in each of such areas and the name of each county and municipality located in whole or in part within the boundaries of such area or areas, or, (ii) if the district is to be a supply district, the name of each county, municipality, and public corporation proposed to be served;

(3) A proposed total number of directors, which shall be at least equal to the total number of counties and municipalities and public corporations with the governing bodies of which such application is filed, but in no event less than three, and proposed provisions for the election of each director by one of such governing bodies and for the election of at least one director by each of said governing bodies; and, if the district will be a supply district, any proposal to give the directors proportional voting power based upon the quantity of water to be taken or paid for by the entities which will elect the directors, the

percentage of indebtedness of the district for which the entities electing the directors will be guarantors, or any other measure for establishing proportional voting power of directors;

(4) The proposed location of the principal office of the district, which shall be within a county with the governing body of which such application is filed or within a county which is served in whole or in part by a public corporation with the governing body of which such application is filed;

(5) A statement that each of the applicants is a duly qualified elector of the county or one of the counties with the governing bodies of which such application is filed or a county which is served in whole or in part by a public corporation with the governing body of which such application is filed; and

(6) A request that each of such governing bodies adopt a resolution declaring that it is wise, expedient, and necessary that the proposed district be formed and authorizing the applicants to proceed to form the proposed district by the filing for record of a certificate of incorporation in accordance with the provisions of Section 11-89-4.

Such application may also state a proposed plan for apportioning the properties of the district upon its dissolution among the public entities with the governing bodies of which such application is filed. Any proposed service area described in any such application shall lie wholly within the boundaries of the county or counties with the governing bodies of which the application is filed and no part of any proposed described service area shall lie within the boundaries of any municipality with the governing body of which the application is not filed. Every such application shall be accompanied by such supporting documents or evidence as the applicants may consider appropriate.

(b) As promptly as may be practicable after the filing of the application in accordance with the provisions of subsection (a) of this section, each governing body with which the application was filed shall review the contents of the application, and shall adopt a resolution either denying the application or declaring that it is wise, expedient, and necessary that the proposed district be formed and authorizing the applicants to proceed to form the proposed district by the filing for record of a certificate of incorporation in accordance with the provisions of Section 11-89-4. Each governing body with which the application is filed shall also cause a copy of the application to be spread upon or otherwise made a part of the minutes of the meeting of such governing body at which final action upon said application is taken.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §3; Acts 1989, No. 89-745, p. 1494, §2.)*

#### **Section 11-89-4**

**Filing of certificate of incorporation, copies of resolutions of governing bodies, etc., with probate judge; contents and execution of certificate of incorporation; notification of Secretary of State of recordation of certificate of incorporation by probate judge.**

(a) Within 40 days following the adoption of an authorizing resolution or, in the event an application was filed with more than one governing body within 40 days following the adoption of an authorizing resolution by that governing body that was the last to adopt an authorizing resolution, but if and only if each other governing body with whom such application was filed has theretofore adopted an authorizing

resolution, the applicants shall proceed to incorporate a district by filing for record in the office of the judge of probate of the county in which the principal office of the district is to be located, as specified in the certificate of incorporation provided for in this section, a certificate of incorporation which shall comply in form and substance with the requirements of this section and which shall be in the form and executed in the manner provided in this section; provided, that any district incorporated prior to November 14, 1975, and which, according to the provisions of its certificate of incorporation, is authorized to render sewer service and own and operate a sewer system, shall be authorized to own and operate a solid waste collection and disposal system in the service area in which it is authorized to render sewer service and own and operate a sewer system, without any further action or authorization and without amending its certificate of incorporation, and without changing its name to indicate the additional service it is authorized to render.

(b) The certificate of incorporation of the district shall state:

(1) The names of the persons forming the district and that each of them is a duly qualified elector of an authorizing subdivision or of a county which is served in whole or in part by an authorizing subdivision;

(2) The period for the duration of the district (if the duration is to be perpetual, subject to the provisions of Section 11-89-17, that fact shall be stated);

(3) The name of each authorizing subdivision, together with the date on which the governing body thereof adopted an authorizing resolution;

(4) The location of the principal office of the district, which shall be the same as that stated in the applications required by Section 11-89-3;

(5)(i) A concise legal description of the area or areas in which the district proposes to render water service, sewer service, and fire protection service or any thereof and a designation of the type or types of service proposed to be rendered in such area or in each of such areas, or, (ii) if the district is to be a supply district, the name of each county, municipality, and public corporation proposed to be served;

(6) The total number of directors and the number of directors which the governing body of each authorizing subdivision shall be entitled to elect; and, if the district will be a supply district, any provision to give the directors proportional voting power based upon the quantity of water to be taken or paid for by the entities which will elect the directors, the percentage of indebtedness of the district for which the entities electing the directors will be guarantors, or any other measure for establishing proportional voting power of directors;

(7) A plan for apportioning the properties of the district upon its dissolution among the authorizing subdivisions, but only if such plan was stated in the application filed with the governing bodies of the authorizing subdivisions in accordance with the provisions of Section 11-89-3;

(8) A statement that the application filed with the governing body of each of the authorizing subdivisions in accordance with Section 11-89-3 was identical to the copy thereof attached to said certificate of incorporation; and

(9) Any other matters relating to the district that the incorporators may choose to insert and that are not inconsistent with this chapter or with the laws of the state.

(c) To the extent that any matter required by the provisions of subsection (b) of this section to be included in the certificate of incorporation of a district is also required or permitted to be included in the application theretofore filed with the authorizing subdivisions in accordance with the provisions of Section 11-89-3, including, but without limitation to, any matter relating to the type or types of service proposed to be rendered by the district, any service area, the number and method of electing directors, the location of the principal office of the district and apportioning the properties of the district upon its dissolution, the provisions of the certificate of incorporation with respect to such matter shall be in strict accordance with the corresponding provisions of such application.

(d) The certificate of incorporation shall be signed and acknowledged by the incorporators before an officer authorized by the laws of the state to take acknowledgments to deeds. When the certificate of incorporation is filed for record, there shall be attached to it a copy of the application as filed with the governing body of each of the authorizing subdivisions in accordance with the provisions of Section 11-89-3, a certified copy of the authorizing resolution adopted by the governing body of each authorizing subdivision and a certificate by the Secretary of State that the name proposed for the district is not identical to that of any other corporation organized under the laws of the state or so nearly similar thereto as to lead to confusion and uncertainty. Upon the filing for record of the said certificate of incorporation and the documents required by the preceding sentence to be attached thereto, the district shall come into existence and shall constitute a public corporation under the name set forth in said certificate of incorporation. The judge of probate shall thereupon send a notice to the Secretary of State that the certificate of incorporation of the district has been filed for record.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §4; Acts 1975, 4th Ex. Sess., No. 104, p. 2785, §1; Acts 1976, No. 540, p. 714; Acts 1979, No. 79-818, p. 1520; Acts 1989, No. 89-745, p. 1494, §3.)*

#### **Section 11-89-5**

#### **Authorization and procedure for amendment of certificate of incorporation.**

(a) The certificate of incorporation of any district incorporated under the provisions of this chapter may at any time and from time to time be amended in the manner provided in this section.

(b)(1) The board of directors of the district shall first adopt a resolution proposing an amendment to the certificate of incorporation which shall be set forth in full in the said resolution and which amendment may include:

a. A change in the name of the district;

b. The addition to the service area of the district of new territory lying within any municipality or, in the case of territory not lying within any municipality, any county in which the district's then existing service area lies;

c. Provisions for the operation of a system or facility the operation of which is not then provided for in the certificate of incorporation of the district and which the district is authorized by this chapter to operate;

- d. Any matters which might have been included in the original certificate of incorporation;
- e. Provisions for the addition to the service area of the district of new territory not lying within any municipality or, in the case of territory not lying within any municipality, any county in which the district's then existing service area lies, together with the related provisions referred to in paragraphs a, b, and c of subdivision (2) of this subsection; and
- f. In the case of a supply district which proposes to cease being only a supply district, the creation of a service area for the district.

(2) If any proposed amendment would add any new territory to the service area of a district, or create a service area, such proposed amendment shall include a concise legal description of the proposed new territory or proposed service area and a designation of the type or types of service proposed to be rendered therein. If any proposed amendment would add to the service area of the district new territory or create a service area any part of which does not lie within any municipality or, in the case of territory or service area not lying within any municipality, any part of which does not lie within any county in which any then existing service area lies, such proposed amendment shall include, in addition:

- a. Provisions for election of at least one director by the governing body of each county and municipality in which any part of the proposed new territory or the proposed service area lies;
- b. Provisions for any change in the total number of directors that the board deems appropriate; and, if the district is a supply district, any provision to give the directors proportional voting power based upon the quantity of water to be taken or paid for by the entities which will elect the directors, the percentage of indebtedness of the district for which the entities electing the directors will be guarantors, or any other measure for establishing proportional voting power of directors; provided, however, that the total number of directors shall be at least equal to the number of directors immediately before the amendment, plus the number added pursuant to paragraph a of this subdivision (2); and
- c. Any provision that the board deems appropriate for apportioning of the properties of the district upon its dissolution among its customers, if it is a supply district, or among the counties and municipalities in which its service area will lie upon the filing for record of said proposed amendment.

(3) If the proposed amendment makes provision for the operation of a system or facility not then provided for in the certificate of incorporation of the district, such proposed amendment shall also include, in addition to a concise legal description of the area or areas in which the district proposes to render service from such system or facility provision for an appropriate change in the name of the district.

(4) It shall not be necessary for a supply district to amend its certificate of incorporation merely to add one or more additional municipalities, counties, or public corporations as customers.

(c) After the adoption by the board of a resolution proposing an amendment to the certificate of incorporation of the district, the chairman of the board or other chief executive officer of the district and the secretary of the district shall sign and file a written application in the name of and on behalf of the district, under its seal, with the governing body of each authorizing subdivision and each additional county and municipality in which any part of the district's then existing service area lies and with the governing body of each county and municipality in which any part of the proposed new territory or the

proposed service area lies. Such application shall request each governing body with which the application is filed to adopt a resolution approving the proposed amendment and shall be accompanied by a certified copy of the said resolution adopted by the board proposing the said amendment to the certificate of incorporation, together with such documents in support of the application as the said chairman or other chief executive officer may consider appropriate.

(d) As promptly as may be practicable after the filing of the said application with any governing body pursuant to the provisions of subsection (c) of this section, that governing body shall review the said application and shall adopt a resolution either denying the said application or authorizing the proposed amendment. Each governing body with which the application is filed shall also cause a copy of the said application and all accompanying documents to be spread upon or otherwise made a part of the minutes of the meeting of said governing body at which final action upon the said application is taken.

(e) Within 40 days following the adoption by the governing body with which the said application shall have been filed of a resolution approving the proposed amendment or, in the event said application was filed with the governing bodies of more than one county or public corporation or municipality, within 40 days following the adoption of such a resolution by that governing body that was the last to adopt such a resolution, but if and only if the governing body of each other county, public corporation, and municipality with whom such application was filed has theretofore adopted such a resolution, the chairman of the board or other chief executive officer of the district and the secretary of the district shall sign and file for record in the office of the judge of probate of the county where the certificate of incorporation of the district was filed a certificate in the name of and in behalf of the district, under its seal, reciting the adoption of said respective resolutions by the board and by each of the said governing bodies and setting forth the said proposed amendment. If the proposed amendment provides for a change in the name of the district, there shall be filed, together with the certificate required by the immediately preceding sentence, a certificate of the Secretary of State showing that the proposed new name of the district is not identical to that of any other corporation then in existence and organized under the laws of this state or so nearly similar to that of any other such corporation so as to lead to confusion and uncertainty. Upon the filing for record of each such certificate, the said amendment to the certificate of incorporation shall become effective. If the proposed amendment effects a change in the name of the district, the judge of probate shall promptly send a notice to the Secretary of State, advising him of such change.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §5; Acts 1989, No. 89-745, p. 1494, §4.)*

#### **Section 11-89-6**

##### **Board of directors.**

Each district shall be governed by a board of directors. All powers of the district shall be exercised by the board or pursuant to its authorization. Subject to the provisions of Sections 11-89-3 and 11-89-4, the board shall consist initially of that number of directors, apportioned among and elected by the authorizing subdivisions, as shall be specified in the certificate of incorporation of the district. The initial term of office of each such director shall begin immediately upon his election and shall end at 12:01 A.M. on the fourth anniversary date of the filing for record of the certificate of incorporation of the district. Thereafter, the term of office of each such director shall be four years; provided however,



each county commission may, if they desire, number the place of each director and prescribe one-, two-, three- or four-year terms for each place so as to stagger the terms of office of the directors.

If any amendment to the certificate of incorporation of the district effected in accordance with the provisions of Section 11-89-5 shall increase the membership of the board, the board shall thereafter consist of such number of directors, elected by such governing bodies, as may be specified in the said amendment. The initial term of office of each new director added by any such amendment shall begin immediately upon his election and shall end at 12:01 A.M. on the fourth anniversary date of the filing for record of such amendment. The term of office of each new director, added by amendment as aforesaid, shall, following the initial term of such new director, be for a period of four years. If at any time there should be a vacancy on the board, a successor director to serve for the unexpired term applicable to such vacancy shall be elected by that governing body which elected the director whose unexpired term he is to fill. Each election of a director, whether for a full four-year term or to complete an unexpired term, shall be made not earlier than 30 days prior to the date on which such director is to take office as such. No officer of the state or of any county or municipality shall, during his tenure as such officer, be eligible to serve as a director.

Each director of a district, other than a supply district, elected by a county governing body must be a duly qualified elector of that county from which he was elected, or, if elected by a municipality of less than 2,000 inhabitants according to the most recent decennial census, such director must be a duly qualified elector of that county in which such municipality is located, or, if elected by a municipality of 2,000 or more inhabitants according to said census, such director must be a duly qualified elector of the municipality from which he was elected. Directors shall be eligible for reelection. Each director shall be reimbursed for expenses actually incurred by him in and about the performance of his duties. If the certificate of incorporation so provides, each director, except the chairman of the board, shall be compensated in an additional amount as prescribed by the governing body of each authorizing subdivision. The chairman shall, if said certificate so provides, be compensated in an additional amount as prescribed by the governing body of each authorizing subdivision.

Any director of the district may be impeached and removed from office in the same manner and on the same grounds provided by Section 175 of the Constitution of Alabama and the general laws of the state for impeachment and removal of the officers mentioned in said Section 175.

If the certificate of incorporation so provides, the directors shall have proportional voting power, based on the measure or measures set out in the certificate of incorporation.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §6; Acts 1979, No. 79-818, p. 1520; Acts 1989, No. 89-745, p. 1494, §5.)*

#### **Section 11-89-7**

**Powers of district generally; power of district to acquire, operate, etc., systems, etc., outside service area; provisions in schedules of rates and charges generally.**

(a) The district shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:



- (1) To have succession by its corporate name for the duration of time (which may be perpetuity, subject to the provisions of Section 11-89-17) specified in its certificate of incorporation;
- (2) To sue and be sued in its own name in civil actions, except as otherwise provided in this chapter, and to defend civil actions against it;
- (3) To adopt and make use of a corporate seal and to alter the same at pleasure;
- (4) To adopt and alter bylaws for the regulation and conduct of its affairs and business;
- (5) To acquire, receive, and take, by purchase, gift, lease, devise, or otherwise, and to hold property of every description, real, personal, or mixed, whether located in one or more counties or municipalities and whether located within or outside the service area;
- (6) To make, enter into, and execute such contracts, agreements, leases, and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the district was organized or to exercise any power expressly granted under this section;
- (7) To plan, establish, develop, acquire, purchase, lease, construct, reconstruct, enlarge, improve, maintain, equip, and operate water systems, sewer systems, and fire protection facilities or any part or combination of any thereof, whether located in one or more counties or municipalities and whether located within or outside any service area and without any requirement that such water systems, sewer systems, or fire protection facilities or all or any part of any thereof be interconnected or otherwise constitute an integrated operational unit, and to acquire real and personal property, franchises, and easements deemed necessary or desirable in connection therewith;
- (8) To distribute and sell water, either at retail or for resale, within the service area or in any part thereof or to or on behalf of one or more counties, municipalities, or other public corporations upon such reasonable terms and for such reasonable rates and consideration as the board may prescribe;
- (9) To furnish and provide sewer service in the service area or in any part thereof or to or on behalf of one or more counties, municipalities, or other public corporations upon such reasonable terms and for such reasonable rates and consideration as the board may prescribe; provided, however, that nothing in this chapter shall authorize any district to collect, transport, treat, or dispose of solid wastes or charge for the collection, transportation, treatment, or disposal of solid wastes from any industrial, manufacturing, or utility plant without consent from the owners or operators of such plant;
- (10) To furnish and provide fire protection service in the service area or in any part thereof or to or on behalf of one or more counties, municipalities, or other public corporations upon such reasonable terms and for such reasonable rates and consideration as the board may prescribe;
- (11) To sell and issue bonds of the district in order to provide funds for any corporate function, use, or purpose, any such bonds to be payable solely out of the revenues derived from any water system, sewer system, and fire protection facility or any thereof of the district;
- (12) To assume obligations secured by a lien on or payable out of or secured by a pledge of the revenues from any water system, sewer system, and fire protection facility or any part of any thereof that may be acquired by the district, any obligation so assumed to be payable by the district solely out of the

revenues derived from the operation of any water system, sewer system, and fire protection facility or any thereof of the district;

(13) To pledge for payment of any bonds issued or obligations assumed by the district any revenues from which those bonds or obligations are made payable as provided in this chapter;

(14) To execute and deliver, in accordance with the provisions of this section and of Sections 11-89-8 and 11-89-9, mortgages and deeds of trust and trust indentures or either;

(15) To exercise the power of eminent domain in the manner provided in and subject to the provisions of Title 18; provided, that this subdivision shall not be deemed to authorize the district to acquire, without the consent of the owner or owners thereof, any water supply system or water distribution system from which water service is at the time being furnished, any sewer system from which sewer service is at the time being furnished, or any property that is at the time being used in the furnishing of fire protection service; provided further, that such right of eminent domain shall not apply to real property or interests therein previously dedicated to public use; and provided further, nothing herein shall authorize any district, county, municipality, public corporation, or other authorizing subdivision to acquire any portion of or withdraw water from any hydroelectric project licensed by the Federal Energy Regulatory Commission or any predecessor or successor agency without the consent of the owner and licensee of said project and the approval of the Federal Energy Regulatory Commission or any successor agency;

(16) To appoint, employ, contract with, and provide for the compensation of such officers, employees, and agents, including, but without limitation to, engineers, attorneys, management consultants, and fiscal advisers as the business of the district may require, and, at its option, to provide a system of disability pay, retirement compensation, and pensions or any of them without regard to any provisions of Sections 41-16-50 through 41-16-63 that might otherwise be applicable;

(17) To make and enforce reasonable rules and regulations governing the use of any water system, sewer system, or fire protection facility owned or controlled by the district;

(18) To provide for such insurance as the board may deem advisable;

(19) To invest any funds of the district that the board may determine are not presently needed in the operation of its properties in bonds of the United States of America, bonds of the state, bonds of any county or municipality and interest-bearing bank deposits or any thereof;

(20) To cooperate with the United States of America, any agency or instrumentality thereof, the state, any county, municipality, or other political subdivision of the state and any public corporation and to make such contracts with them or any of them, as the board may deem advisable to accomplish the purpose for which the district was established;

(21) To sell and convey any of its properties that may have become obsolete or worn out or that may no longer be needed or useful as a part of any water system, sewer system, or fire protection facility of the district;

(22) To sell and convey, with or without valuable consideration, any of its water systems, sewer systems, or fire protection facilities or any portion of any of the said systems and facilities to any one or more counties, municipalities, or public corporations which have the corporate power to operate the

system and facilities or portions thereof so conveyed and the property and income of which are not subject to taxation; provided, that any such sale and conveyance may be made only with the consent of each county and municipality in which any part of any service area of the district is then located, or, with respect to a supply district, the consent of each authorizing subdivision, any such consent to be evidenced by a resolution adopted by the governing body of each consenting county and municipality, or authorizing subdivision, as the case may be, and only if any such conveyance would not constitute a breach of any then outstanding mortgage and deed of trust, trust indenture or other agreement to which the district is a party;

(23) To enter into a management agreement or agreements with any person for the management by the district of any water system, sewer system, or fire protection facility or any thereof upon such terms and conditions as may be mutually agreeable;

(24) To fix and revise from time to time reasonable rates, fees, and other charges for water service, sewer service, fire protection service, or any thereof, furnished or to be furnished by any water system, sewer system, or fire protection facility, or portion of any thereof, owned or operated by the district, and to collect all charges made by it; and

(25) To require the owner, tenant, or occupant of each lot or parcel of land who is obligated to pay rates, fees, or charges for the use of or for the services furnished by any water system, sewer system, or fire protection system owned or operated by the district under the provisions of this chapter to make a reasonable deposit with the district in advance to insure the payment of such rates, fees, or charges and to be subject to the application to the payment thereof if and when delinquent.

(b) Nothing in this section shall be construed to permit a district other than a supply district to acquire, receive, take, hold, establish, develop, construct, reconstruct, enlarge, improve, maintain, equip, or operate any property or water system, sewer system, and fire protection facility or any part or combination of any thereof located outside the service area, except as an incident to the rendering of water service, sewer service, and fire protection service or any thereof inside the service area or to render water service, sewer service, and fire protection service or any thereof unless such district is authorized so to do in its certificate of incorporation and any amendments thereto.

(c) Any schedule or schedules of rates and other charges adopted by the board may:

(1) Provide for the rendition by the district to customers served by it of combined statements or bills for service furnished from its water systems, its sewer systems, and its fire protection facilities or any one or more of any thereof;

(2) Permit the district to decline to accept payment of charges for service from any of its said systems and facilities, without payment of charges for service at the same premises from any one or more of its other systems and facilities;

(3) Provide for a discontinuance of service from any or all of its said systems and facilities at any premises with respect to which there is a delinquency in the payment of charges for service from any system or facility of the district;

(4) Provide for the payment of connection fees, disconnection fees, and reconnection fees; and

(5) Require, as a prerequisite to the rendition of any service, the making of a deposit as a security for payment of bills, on which deposit the district shall not be obligated to pay or allow interest.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §7; Acts 1976, No. 540, p. 714; Acts 1979, No. 79-818, p. 1520; Acts 1989, No. 89-745, p. 1494, §6.)*

#### **Section 11-89-8**

**Bonds of district - Form, terms, denominations, etc.; sale; execution and delivery; refunding; liability thereon; security for payment of principal and interest and payment thereof generally; provisions in mortgages, deeds of trust or trust indentures executed as security for payment of bonds generally.**

All bonds issued by the district shall be signed by the chairman of its board or other chief executive officer and attested by its secretary and the seal of the district shall be affixed thereto, and any interest coupons applicable to the bonds of the district shall be signed by the chairman of its board or other chief executive officer; provided, that a facsimile of the signature of one, but not both, of said officers may be printed or otherwise reproduced on any such bonds in lieu of his manually signing the same, a facsimile of the seal of the district may be printed or otherwise reproduced on any such bonds in lieu of being manually affixed thereto and a facsimile of the signature of the chairman of its board or other chief executive officer may be printed or otherwise reproduced on any such interest coupons in lieu of his manually signing the same.

Any such bonds may be executed and delivered by the district at any time and from time to time shall be in such form and denominations and of such tenor and maturities, shall contain such provisions not inconsistent with the provisions of this chapter and shall bear such rate or rates of interest, payable and evidenced in such manner, as may be provided by resolution of its board. Bonds of the district may be sold at either public or private sale in such manner and at such price or prices and at such time or times as may be determined by the board to be most advantageous. The principal of and interest on any bonds issued or obligations assumed by the district may thereafter at any time (whether before, at or after maturity of any such principal and whether at, after or not exceeding six months prior to the maturity of any such interest) and from time to time be refunded by the issuance of refunding bonds of the district, which may be sold by the district at public or private sale at such price or prices as may be determined by its board to be most advantageous or which may be exchanged for the bonds or other obligations to be refunded. The district may pay all expenses, premiums and commissions which its board may deem necessary and advantageous in connection with any financing done by it. All bonds issued by the district shall be construed to be negotiable instruments although payable solely from a specified source.

All obligations created or assumed and all bonds issued or assumed by the district shall be solely and exclusively an obligation of the district and shall not create an obligation or debt of any county or municipality; provided, that the provisions of this sentence shall not be construed to release the original obligor from liability on any bond or other obligation assumed by the district.

Any bonds issued by the district shall be limited or special obligations of the district payable solely out of the revenues of the district specified in the proceedings authorizing those bonds. Any such proceedings may provide that the bonds therein authorized shall be payable solely out of the revenues

derived from the operation of all water systems, sewer systems and fire protection facilities owned by the district or solely out of the revenues from the operation of any one or more of such systems or facilities or parts thereof, regardless of the fact that those bonds may have been issued with respect to or for the benefit of only certain particular systems or facilities of the district.

The district may pledge for the payment of any of its bonds the revenues from which such bonds are payable and may execute and deliver a trust indenture evidencing any such pledge or a mortgage and deed of trust conveying as security for such bonds the water systems, sewer systems or the fire protection facilities or any part of any thereof the revenues or any part of the revenues from which are so pledged. Any mortgage and deed of trust or trust indenture made by the district may contain such agreements as the board may deem advisable respecting the operation and maintenance of the property and the use of the revenues subject to such mortgage and deed of trust or affected by such trust indenture and respecting the rights, duties and remedies of the parties to any such instrument and the parties for the benefit of whom such instrument is made; provided, that no such instrument shall be subject to foreclosure.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §9.)*

#### **Section 11-89-9**

##### **Bonds of district - Contracts to secure payment of principal and interest.**

As security for payment of the principal of and the interest on bonds issued or obligations assumed by it, the district may enter into a contract or contracts binding itself for the proper application of the proceeds of bonds and other funds, for the continued operation and maintenance of any water system, sewer system, or fire protection facility owned by it or any part or parts thereof, for the imposition and collection of reasonable rates for and the promulgation of reasonable regulations respecting any service furnished from such system or facility, for the disposition and application of its gross revenues or any part thereof and for any other act or series of acts not inconsistent with the provisions of this chapter for the protection of the bonds and other obligations being secured and the assurance that the revenues from such system or facility will be sufficient to operate such system or facility, maintain the same in good repair and in good operating condition, pay the principal of and the interest on any bonds payable from such revenues and maintain such reserves as may be deemed appropriate for the protection of the bonds, the efficient operation of such system or facility and the making of replacements thereof and capital improvements thereto.

Any contract pursuant to the provisions of this section may be set forth in any resolution of the board authorizing the issuance of bonds or the assumption of obligations or in any mortgage and deed of trust or trust indenture made by the district under this chapter.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §10.)*

#### **Section 11-89-10**

## **Bonds of district - Statutory mortgage lien to secure payment of principal and interest.**

Any resolution of the board or trust indenture under which bonds may be issued pursuant to the provisions of this chapter may contain provisions creating a statutory mortgage lien, in favor of the holders of such bonds and of the interest coupons applicable thereto, on the water systems, sewer systems, and fire protection facilities or any thereof (including any after-acquired property) out of the revenues from which such bonds are made payable. The said resolution of the board or the said trust indenture may provide for the filing for record in the office of the judge of probate of each county in which any part of such water systems, sewer systems, and fire protection facilities or any thereof may be located of a notice containing a brief description of such systems and facilities or either, a brief description of such bonds and a declaration that said statutory mortgage lien has been created for the benefit of the holders of such bonds and the interest coupons applicable thereto upon such systems and facilities or either, including any additions thereto and extensions thereof. Each judge of probate shall receive, record, and index any such notice filed for record in his office. The recording of such notice, as provided in this section, shall operate as constructive notice of the contents thereof.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §11.)*

### **Section 11-89-11**

## **Bonds of district - Disposition of proceeds from sale of bonds.**

All moneys derived from the sale of any bonds issued by the district shall be used solely for the purpose or purposes for which the same are authorized and any costs and expenses incidental thereto. Such costs and expenses may include but shall not be limited to:

- (1) The fiscal, engineering, legal, and other expenses incurred in connection with the issuance of the bonds;
- (2) Interest on the bonds in the case of bonds issued to pay costs of construction or, if a part only of any series of bonds is issued for construction purposes, interest on that portion of the bonds of that series that is issued to pay construction costs prior to and during such construction and for not exceeding one year after completion of such construction; and
- (3) Any premium that it may be necessary to pay in order to redeem or retire the bonds or other obligations to be refunded in the case of bonds issued for the purpose of refunding principal and interest, or either, with respect to bonds issued or obligations assumed by the district.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §12.)*

### **Section 11-89-12**

## **Establishment and revision of rates, fees, and charges for services rendered by district.**



Rates, fees, and charges for water service, sewer service, and fire protection service rendered by the district from any of its water systems, sewer systems or fire protection facilities shall be so fixed and from time to time revised as at all times to provide funds at least sufficient to:

- (1) Pay the cost of operating, maintaining, repairing, replacing, extending, and improving the systems and facilities or either from which such services are rendered;
- (2) Pay the principal of and the interest on all bonds issued and obligations assumed by the district that are payable out of the revenues derived from operation of those systems and facilities as the said principal and interest become due and payable;
- (3) Create and maintain such reserve for the foregoing purposes or any of them as may be provided in any mortgage and deed of trust or trust indenture executed by the district under this chapter or in any resolutions of the board authorizing the issuance of bonds, the assumption of any obligation or the acquisition of any such system or facility; and
- (4) Make such annual payments, if any, to the United States of America or any agency or instrumentality thereof, the state, municipalities, counties, departments, authorities, agencies, and political subdivisions of the state and any public corporations organized under the laws of the state as the district may have contracted to make.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §8.)*

#### **Section 11-89-13**

#### **Loans, sales, grants, etc., of money, property, etc., to district by counties, municipalities, public corporations, etc.**

For the purpose of securing water service, sewer service, or fire protection service or aiding or cooperating with the district in the planning, development, undertaking, construction, extension, improvement, operation, or protection of water systems, sewer systems, and fire protection facilities, any county, municipality, or other political subdivision, public corporation, agency, or instrumentality of this state may, upon such terms and with or without consideration, as it may determine:

- (1) Lend or donate money to, guarantee all or any part of the indebtedness of, or perform services for the benefit of the district;
- (2) Donate, sell, convey, transfer, lease, or grant to the district, without the necessity of authorization at any election of qualified voters, any property of any kind, including, but without limitation, any water system, sewer system, or fire protection facility, any interest in any thereof and any franchise;
- (3) Contract with the district under such terms as may be mutually agreeable, including a contract obligating it to purchase a certain quantity of water from the district in a stipulated period of time, or to pay for such quantity of water whether or not it receives it; and



(4) Do any and all things, whether or not specifically authorized in this section, not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the district in the planning, undertaking, construction, or operation of water systems, sewer systems, and fire protection facilities.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §13; Acts 1989, No. 89-745, p. 1494, §7.)*

#### **Section 11-89-14**

##### **Use of rights-of-way of public roads by district.**

Each district is hereby authorized to use the rights-of-way of all public roads in the state without securing the prior approval of the state or of its agencies or departments or the governing body of any county and subject only to the necessity of obtaining the municipal consent required by Section 220 of the Constitution of Alabama; provided, however, that nothing in this section shall be construed to exempt any district from the requirements of Section 23-1-4; provided further, that the said district shall have the duty to restore at its expense all roads, highways, and public rights-of-way in which it may have made excavations or done other work in laying pipes or performing any of its other corporate functions.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §17.)*

#### **Section 11-89-15**

##### **Furnishing of fire protection service by district declared governmental function; immunity from tort liability of district.**

The furnishing of fire protection service by a district is hereby declared to be a governmental function.

The district shall not be liable for any tort, whether negligent or willful, committed by any director, agent, servant, or employee of the district in the furnishing of fire protection service or in the construction, maintenance, or operation of any fire protection facility.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §14.)*

#### **Section 11-89-16**

##### **Exemption from taxation of district and property, leases, bonds, etc., thereof; payment of fees, taxes, or costs to probate judge for incorporation, etc.**

The property and income of the district, all bonds issued by the district, the income from such bonds, conveyances by or to the district and leases, mortgages and deeds of trust by or to the district shall be exempt from all taxation in the State of Alabama. The district shall be exempt from all taxes levied by

any county, municipality, or other political subdivision of the state, including, but without limitation to, license and excise taxes imposed in respect of the privilege of engaging in any of the activities that a district may engage in.

The district shall not be obligated to pay or allow any fees, taxes, or costs to the judge of probate of any county in respect of its incorporation, the amendment of its certificate of incorporation, or the recording of any document.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §15.)*

#### **Section 11-89-17**

#### **Authorization and procedure for dissolution of district; vesting of title to properties of district and apportionment thereof upon dissolution of district.**

At any time when the district has no bonds or other obligations outstanding, the board may adopt a resolution, which shall be duly entered upon its minutes, declaring that the district shall be dissolved. Upon the filing for record of a certified copy of the said resolution in the office of the judge of probate of the county in which the district's certificate of incorporation was filed the district shall thereupon stand dissolved and, in the event it owned any property at the time of its dissolution, the title to all its property shall thereupon pass to and be divided and apportioned among the counties and municipalities in which any part of the service area may be located, or, if it is a supply district, among its authorizing subdivisions, all in such manner and to such extent as may be provided in the district's certificate of incorporation, as amended; provided, however, that in the absence of a contrary provision in the said certificate of incorporation, as amended, title to real estate and tangible personal property, other than cash, shall vest in the county or municipality, as the case may be, in which the said real estate or tangible personal property is located and the title to cash on hand and in banks, accounts receivable, choses in action, and other intangible property, other than intangible interest in land, shall vest in all of the counties and municipalities in which any part of the service area lies. Each such county and municipality shall have title to said cash and intangible items as a tenant in common thereof, the fractional interest of each such tenant in common in said items being represented by a fraction the numerator of which is an amount equal to the gross revenues derived by the district during its then next preceding complete fiscal year from service rendered in that part of its service area within that county or municipality, as the case may be, and the denominator of which is an amount equal to the gross revenues derived by the district during the same period from services rendered in its entire service area. For the purposes of this section only, real and tangible personal property, other than cash, located and service rendered wholly within a municipality shall not be deemed to be located or rendered, as the case may be, in a county.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §18; Acts 1989, No. 89-745, p. 1494, §8.)*

#### **Section 11-89-18**

#### **Existence of district not to prevent subsequent incorporation, etc., of another district.**

The existence of one or more districts incorporated under the provisions of this chapter shall not prevent the subsequent incorporation under this chapter of another district or the amendment of the certificate of incorporation of another district pursuant to authority granted by the same county, counties, municipality or municipalities, public corporation or public corporations, or by the same combination thereof, even though the service area described in the certificate of incorporation, as originally filed or amended, of any existing district may include territory that lies within the proposed service area of a district that is proposed to be incorporated under this chapter or that proposes to amend its certificate of incorporation under this chapter.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §19; Acts 1989, No. 89-745, p. 1494, §9.)*

#### **Section 11-89-19**

**Provisions of chapter as to incorporation of district, acquisition of property, issuance of bonds, etc., exclusive; jurisdiction over and regulation of district, etc., by State Board of Health, Public Service Commission, etc.**

Except as expressly otherwise provided in this chapter, no proceeding, notice, or approval shall be required for the incorporation of any district or the amendment of its certificate of incorporation, the acquisition of any property, water system, sewer system, or fire protection facility or the issuance of any bonds, mortgage and deed of trust or trust indenture; provided, however, that nothing contained in this section shall be construed to exempt any district from the jurisdiction of the State Board of Health.

The district, every water system, sewer system, or fire protection facility of the district and the rates and charges thereof shall be exempt from all jurisdiction of and all regulation and supervision by the Public Service Commission and neither a public hearing nor the consent of the State Department of Finance shall be prerequisite to the issuance of bonds by the district.

*(Acts 1970, Ex. Sess., No. 29, p. 2630, §16.)*

#### **Section 11-89-38**

**Incorporation of other powers.**

Sections 11-89-8 to 11-89-19, inclusive, which are applicable to a district shall be applicable, with the necessary changes in detail, to a special corporation, except that no special corporation created by this article shall create another special corporation under this article.

*(Acts 1994, No. 94-707, p. 1370, §9.)*

#### **Section 11-98-1**

## **Definitions.**

(a) As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) **AUTOMATIC NUMBER IDENTIFICATION.** An enhanced 911 service capability that enables the automatic display of the 10-digit telephone number used to place a 911 call. The term includes pseudo-automatic number identification, which means an enhanced 911 service capability that enables identification of the subscriber.

(2) **CMRS.** Commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Aug. 10, 1993, 107 Stat. 312. The term includes the term wireless and service provider by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include service whose customers do not have access to 911 or to an enhanced 911-like service, to a communications channel suitable only for data transmission, to a wireless roaming service or other non-local radio access line service, or to a private telecommunications system.

(3) **CMRS CONNECTION.** Each mobile telephone number assigned to a CMRS subscriber with a place of primary use in Alabama.

(4) **CMRS PROVIDER.** A person or entity that provides CMRS.

(5) **CREATING AUTHORITY.** The municipal governing body of any municipality or the governing body of any county that, by passage of a resolution or ordinance, creates a district within its respective jurisdiction in accordance with this chapter.

(6) **DISTRIBUTION FORMULA.** The percentage of the total state population residing in a district, compared to the total state population residing in all districts statewide, based upon the latest census data or estimates compiled by or for the Alabama Department of Economic and Community Affairs.

(7) **DISTRICT.** A communication district created pursuant to this chapter.

(8) **ENHANCED 911, E-911, or E-911 SYSTEM.** An emergency telephone system that directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, that provides the capability for automatic number identification, and the features that the Federal Communications Commission may require in the future. Such system may include lines, facilities, and equipment necessary for answering, transferring, and dispatching public emergency telephone calls originated by persons within the service area who dial 911 but does not include dial tone first which may be made available by the service provider based on the ability to recover the costs associated with its implementation and, to the extent required by law, consistent with tariffs with and approved by the Alabama Public Service Commission.

(9) **FCC ORDER.** The order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on June 12, 1996, and released on July 26, 1996.

(10) **OTHER ORIGINATING SERVICE PROVIDER.** An entity other than a voice communication service provider that delivers real-time communication between a person needing assistance and an E-911 system.

(11) **PHASE II ENHANCED 911.** An enhanced 911 system that identifies the location of all 911 calls by longitude and latitude in conformance with accuracy requirements established by the Federal Communications Commission.

(12) **PLACE OF PRIMARY USE.** The street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

a. The residential street address or the primary business street address of the customer.

b. Within the licensed service areas of the CMRS provider.

(13) **PUBLIC SAFETY AGENCY.** An agency of the State of Alabama, or a functional division of a political subdivision, that provides fire fighting, rescue, natural or man-caused disaster, or major emergency response, law enforcement, ambulance, or emergency medical services.

(14) **STATEWIDE 911 BOARD or 911 BOARD.** The statewide 911 Board established pursuant to Section 11-98-4.1.

(15) **STATEWIDE 911 CHARGE.** The statewide 911 charge created pursuant to Section 11-98-5.

(16) **SUBSCRIBER.** A person who purchases a voice communications service and is able to receive it or use it periodically over time; provided, however, that for purposes of the imposition and collection of the statewide 911 charge the term subscriber shall not include the State of Alabama, the counties within the state, incorporated municipalities of the State of Alabama, county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama.

(17) **TECHNICAL PROPRIETARY INFORMATION.** Technology descriptions, technical information, or trade secrets, including the term trade secrets as defined by the Alabama Trade Secrets Act of 1987, Chapter 27 of Title 8, and the actual or developmental costs thereof which are developed, produced, or received internally by a voice communications service provider or by its employees, directors, officers, or agents.

(18) **VOICE COMMUNICATIONS SERVICE.** Any of the following:

a. The transmission, conveyance, or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, or other medium or method, regardless of the protocol used.

b. The ability to receive and terminate voice calls to and from the public switched telephone network.

c. Interconnected VoIP service, as that term is defined by 47 C.F.R. § 9.3.

d. Such other services to which the statewide 911 charge is applied pursuant to Section 11-98-4.1(e)(8).

(19) VOICE COMMUNICATIONS SERVICE PROVIDER. An entity that provides voice communications service to a subscriber in the State of Alabama.

(b) The terms department, prepaid retail, transaction, prepaid wireless telephone service, and prepaid wireless consumer shall have those meanings ascribed to them in Section 11-98-5.3.

*(Acts 1984, No. 84-369, p. 854, §3; Acts 1992, No. 92-562, p. 1165, §1; Acts 1992, 2nd Ex. Sess., No. 92-706, p. 181, §1; Act 2000-693, p. 1411, §1; Act 2012-293, p. 592, §1.)*

## **Section 11-98-2**

### **Districts; creation; composition; powers and duties.**

The creating authority may by ordinance or resolution, as may be appropriate, create within its respective jurisdiction districts composed of the territory lying wholly within the municipality or of any part or all of the territory lying wholly within the county. The districts shall be political and legal subdivisions of the state, with power to sue and be sued in their corporate names and to incur debt and issue bonds. The bonds shall be negotiable instruments and shall be solely the obligations of the district and not the State of Alabama. The bonds and the income thereof shall be exempt from all taxation in the State of Alabama. The bonds shall be payable out of the income, revenues, and receipts of the district. The bonds shall be authorized and issued by resolution or ordinance of the creating authority of the district and shall be of such series, bear such date or dates, mature at such time or times, not to exceed 30 years from issuance, bear interest at such rate or rates, be in such denominations, be in such form, without coupon or fully registered without coupon, carry such registration and exchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, and be entitled to the priorities on the income, revenues, and receipts of the district as the resolution or ordinance may provide.

All bonds shall contain a recital that they are issued pursuant to this chapter, which recitals shall be conclusive that they have been duly authorized pursuant to this chapter.

*(Acts 1984, No. 84-369, p. 854, §1; Acts 1992, No. 92-562, p. 1165, §1; Act 2000-693, p. 1411, §1; Act 2012-293, p. 592, §1.)*

## **Section 11-98-3**

### **The digits 911 established as primary emergency telephone number.**

It has been shown to be in the public interest to shorten the time required for a citizen to request and receive emergency aid. The provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained will provide a significant contribution to law enforcement and other public service efforts by simplifying the notification of public service personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of moneys.

Establishment of a uniform emergency number is a matter of concern and interest to all citizens. It is the purpose of this chapter to establish the number 911 as the primary emergency telephone number for use in communications districts created in municipalities or counties as herein provided.

*(Acts 1984, No. 84-369, p. 854, §2.)*

#### **Section 11-98-4**

##### **Board of commissioners.**

(a) When any district is created, the creating authority may appoint a board of commissioners composed of seven members to govern its affairs, and shall fix the domicile of the board of commissioners at any point within the district. In the case of county districts, after the expiration of the terms of the members of the board of commissioners holding office on May 23, 2000, there may be at least one member of the board of commissioners from each county commission district if the number of the county commission does not exceed seven, unless a resolution dated before January 1, 2000, was passed by a county commission establishing an appointment process different from this section or as otherwise provided by the enactment of a local act after May 23, 2000. The members of the board of commissioners shall be qualified electors of the district, two of whom shall be appointed for terms of two years, three for terms of three years, and two for terms of four years, dating from the date of the adoption of the resolution or ordinance creating the district. Thereafter, all appointments of the members shall be for terms of four years.

(b) The board of commissioners shall have complete and sole authority to appoint a chairman and any other officers it may deem necessary from among the membership of the board of commissioners.

(c) A majority of the board of commissioners membership shall constitute a quorum and all official action of the board of commissioners shall require a quorum.

(d) The board of commissioners may employ such employees, experts, and consultants as it deems necessary to assist the board of commissioners in the discharge of its responsibilities to the extent that funds are made available.

(e) In lieu of appointing a board of commissioners, the governing body of the creating authority may serve as the board of commissioners of the district, in which case it shall assume all the powers and duties of the board of commissioners as provided in this chapter.

(f) In addition to other authority and powers necessary to establish, operate, maintain, and replace an emergency communication system, the board of commissioners shall have the following authority:

(1) To sue and be sued, to prosecute, and defend civil actions in any court having jurisdiction of the subject matter and of the parties.

(2) To acquire or dispose of, whether by purchase, sale, gift, lease, devise, or otherwise, property of every description that the board may deem necessary, consistent with this section, and to hold title thereto.



(3) To construct, enlarge, equip, improve, maintain, and operate all aspects of an emergency communication system consistent with subsection (a) of Section 11-98-6.

(4) To borrow money for any of its purposes.

(5) To provide for such liability and hazard insurance as the board of commissioners may deem advisable to include inclusion and continuation, or both, of district employees in state, county, municipal, or self-funded liability insurance programs.

(6) To enter into contracts or agreements with public or private safety agencies for dispatch services when such terms, conditions, and charges are mutually agreed upon, unless otherwise provided by local law.

(7) To make grants to municipalities for dispatching equipment and services.

(g) The board of commissioners may elect to form a nonprofit, public corporation with all of the powers and authority vested in such political and legal entities. The certificate of incorporation shall recite, in part:

(1) That this is a nonprofit, public corporation and is a political and legal subdivision of the State of Alabama as defined in this chapter.

(2) The location of its principal office.

(3) The name of the corporation.

(4) That the governing body is the board of commissioners.

(h) Any other provisions of this chapter notwithstanding, the board of commissioners shall present to the creating authority for approval the acquisition, disposition, or improvements to real property.

(i) In addition to the provisions of subdivision (5) of subsection (f), each employee or official of the district who receives funds or is involved in the disbursement of funds in any manner shall be bonded in an amount not less than the amount of total funds received by the district in the prior fiscal year. The bonds shall be paid for by the district, and a copy shall be on file at the offices of the district and at the office of the judge of probate of the county in which the district is incorporated.

*(Acts 1984, No. 84-369, p. 854, §4; Acts 1992, No. 92-562, p. 1165, §1; Act 2000-693, p. 1411, §1; Act 2010-503, p. 808, §1; Act 2012-293, p. 592, §1.)*

#### **Section 11-98-4.1**

#### **911 Board created; composition; powers and duties.**

(a) There is created a statewide 911 Board comprised of 13 members that shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The 911 Board shall be created effective

July 1, 2012, and until the effective date of the statewide 911 charge pursuant to Section 11-98-5, with cooperation of the CMRS Board, shall plan for the implementation of the statewide 911 charge and the distribution of the revenues as provided herein. The reasonable administrative expenses incurred by the 911 Board prior to the implementation of the statewide 911 charge may be deducted from the existing CMRS Fund. Upon the effective date of the new statewide 911 charge, the 911 Board shall replace and supersede the CMRS Board formerly created pursuant to this chapter, and the CMRS Fund shall be incorporated into, and considered part of, the 911 Fund.

(b) The 13 members of the 911 Board, each of whom shall serve for a term of four years, shall be appointed by the Governor as follows:

(1) Seven members recommended by the Alabama Association of 911 Districts, one from each of the seven congressional districts, with each district representative recommended selected by vote of the Alabama Association of 911 Districts members from that congressional district. The initial appointments shall include the three district representatives on the CMRS Board who shall serve through March 31, 2014, and a member from the first, third, fifth, and seventh congressional districts as provided herein. Following the March 31, 2014, expiration of the terms of the district representatives drawn from the CMRS Board, the Governor shall appoint a member recommended by the Association of 911 Districts from each of the second, fourth, and sixth congressional districts, it being the intent of this section that each of the seven district representatives on the board be from a different congressional district, as such districts exist on May 8, 2012.

(2) Two members recommended by CMRS providers licensed to do business in Alabama.

(3) Two members recommended by incumbent local exchange carriers operating in Alabama, who shall not be from the same local exchange carrier.

(4) Two members recommended by cable companies that provide interconnected VoIP services in Alabama, who shall not be from the same cable company.

(c) For purposes of the initial board appointments, (1) five members of the board shall be appointed for a four-year term; (2) four members for a three-year term; (3) the three members of the CMRS Board who are appointed pursuant to subdivision (1) of subsection (b) to terms ending on March 31, 2014; and (4) the remaining member for a two-year term. Thereafter, board members shall serve staggered terms of four years. In the event of vacancy, the vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. Any vacancy occurring on the 911 Board, whether for an expired or unexpired term, shall be filled by appointment as soon as practicable after the vacancy occurs, whether for an expired or unexpired term.

(d) For all terms expiring after July 1, 2015, appointments made by the Governor shall be subject to confirmation by the Senate as provided in this subsection. Appointments made at times when the Senate is not in session shall be effective immediately ad interim and shall serve until the Senate acts on the appointment as provided herein. Any appointment made while the Senate is not in session shall be submitted to the Senate not later than the third legislative day following the reconvening of the Legislature. In the event the Senate fails or refuses to act on the appointment, the person whose name was submitted shall continue to serve until action is taken on the appointment by the Senate.

(e) The statewide 911 Board shall have the following powers and duties:

- (1) To develop a 911 State Plan. In fulfilling this duty, the 911 Board shall monitor trends in voice communications service technology and in enhanced 911 service technology, investigate, and incorporate Geographical Information Systems (GIS) mapping and other resources into the plan, and formulate recommended strategies for the efficient and effective delivery of enhanced 911 service. In addition, the board, in conjunction with the Permanent Oversight Commission and utilizing the information developed by the Department of Examiners of Public Accounts pursuant to Section 11-98-13.1, shall study the operational and financial condition of the current 911 systems within the State of Alabama and publish a report detailing the same; study the rates charged for wireline 911 services and make adjustments to the rates as provided in this chapter; recommend a long-term plan for the most efficient and effective delivery of 911 services in Alabama over both the long- and short-term; recommend any legislation necessary to implement the long-term plan; and report its recommendations to the Permanent Oversight Commission no later than February 1, 2014.
- (2) To administer the 911 Fund and the monthly statewide 911 charge authorized by Section 11-98-5.
- (3) To distribute revenue in the 911 Fund in accordance with this chapter.
- (4) To establish policies and procedures, adopted in accordance with the Alabama Administrative Procedure Act, to fund advisory services and training for districts and to provide funds in accordance with these policies and procedures to the extent funds are available.
- (5) To make and enter into contracts and agreements necessary or incidental to the performance of its powers and duties under this chapter and to use revenue available to the 911 Board under Section 11-98-5 for administrative expenses to pay its obligations under the contracts and agreements.
- (6) To accept gifts, grants, or other money for the 911 Fund.
- (7) To undertake its duties in a manner that is competitively and technologically neutral as to all voice communications service providers.
- (8) To adopt rules in accordance with the Administrative Procedure Act to implement this chapter; to establish the statewide 911 charge; and, in response to technological changes, apply, collect, and remit the statewide 911 charge, without duplication, to the active service connections of other originating service providers that are technically capable of accessing a 911 system, subject to the provisions applicable to voice communications service providers under this chapter. Any proposed rule extending the application of the 911 charge beyond those voice communication services defined in paragraphs a. to c., inclusive, of subdivision (18) of Section 11-98-1, upon approval by the 911 Board shall be submitted to the Permanent Oversight Committee which, by an affirmative vote of six of its members, may disapprove the action. If not disapproved by the Permanent Oversight Committee within 15 days of submission, the proposed rule shall be deemed adopted by the 911 Board on the fifteenth day after submission and shall be certified to the Legislative Reference Service in accordance with the Administrative Procedure Act. This authority does not include the regulation of any 911 service, such as the establishment of technical standards.
- (9) To take other necessary and proper action to implement this chapter.

*(Act 2012-293, p. 592, §2.)*

## **Section 11-98-5**

### **Monthly statewide 911 charge.**

(a) A single, monthly statewide 911 charge shall be imposed on each active voice communications service connection in Alabama that is technically capable of accessing a 911 system. For CMRS providers, the statewide 911 charge shall be levied on each CMRS connection with a primary place of use in the State of Alabama. The statewide 911 charge is payable by the subscriber to the voice communications service provider. Except as otherwise provided in this chapter, the voice communications service provider shall list the statewide 911 charge separately from other charges on the bill and the charge shall be collected according to the regular billing practice of the voice communications service provider. The statewide 911 charge collected under this section shall not be subject to taxes or charges levied on or by the voice communications service provider nor shall the charges and fees be considered revenue of the voice communications service provider for any purposes. Partial payments made by a subscriber are applied first to the amount owed for voice communications service. The 911 Board shall collect from each voice communications service provider the monthly statewide 911 charges prescribed herein. The initial statewide 911 charge shall be developed by the 911 Board at an amount calculated to produce, after deduction of administrative fees specified in this chapter, annual total revenues equal to the annual 911 fees collected by or on behalf of, or owed to, districts and governmental bodies, as calculated for purposes of the base distribution amount under subdivision (3) of subsection (b) of Section 11-98-5.2, plus, without duplication, (1) the amount of CMRS service charges collected by the CMRS Board for the 12 months ending September 30, 2011, and (2) an amount equal to any other taxpayer funding of E-911 systems by counties or municipalities in areas where no separate 911 fee is imposed. The revenues and other funds used to determine the initial statewide 911 charge shall be hereafter referred to as the baseline 911 revenues. The statewide 911 charge shall be uniformly applied and shall be imposed throughout the state, and shall replace all other 911 fees or 911 taxes. The 911 Board shall certify that the initial statewide 911 charge adopted herein is reasonably calculated so as not to exceed the funding requirements of this chapter. The board shall submit the recommended statewide 911 charge to the Permanent Oversight Commission for review and approval no later than March 1, 2013. The Permanent Oversight Commission may reject the recommended statewide 911 charge and specify an alternative charge, calculated in accordance with this chapter, by an affirmative vote of six of its members; provided, however, in no case may the Permanent Oversight Commission establish a rate which reduces funding below that necessary to produce the baseline 911 revenues as established under this chapter. Failure of the Permanent Oversight Commission to reject the recommended statewide charge and specify an alternative charge within 30 days of submission shall result in the charge being deemed approved for implementation on October 1, 2013, without the need for further action. Should the Permanent Oversight Commission reject the recommended statewide 911 charge and specify an alternative rate, it shall specify the basis for its action to the board, which may, by a supermajority of 60 percent of a quorum of its members, reject the alternative charge in favor of its original recommended charge or a lower charge. The statewide 911 charge established by the 911 Board following such second review shall not be subject to further review by the Permanent Oversight Commission and shall take effect automatically on October 1, 2013. Failure of the 911 Board to reject or modify the alternative charge submitted by the Permanent Oversight Commission within 30 days of submission shall result in the alternative charge being deemed approved for implementation on October 1, 2013, without the need for further action.

(b) A voice communications service provider shall remit the statewide 911 charge collected by it under this section to the 911 Board, utilizing such electronic or paper reporting forms that may be adopted by the 911 Board by rule. The provider shall remit the collected charges by the end of the calendar month following the month the provider received the charges from its subscribers. A voice communications service provider may deduct and retain from the statewide 911 charges it receives from its subscribers and remits to the 911 Board an administrative allowance in an amount equal to one percent. The voice communications service provider shall maintain records of the amount of the statewide 911 fees collected for a period of at least two years from the date of collection. Good faith compliance by the voice communications service supplier with this chapter shall constitute a complete defense to any legal action or claim that may result from the voice communications service provider's determination of nonpayment or the identification of service users, or both.

(c) Subject to succeeding provisions of this subsection:

(1) The 911 Board, from time to time but in no event more than once every fiscal year, shall increase or decrease the rate of the statewide 911 charge by an amount reasonably calculated to produce the baseline 911 revenues, plus any additional revenues necessary to meet the requirements of subdivision (6) of subsection (b) of Section 11-98-5.2.

(2) The 911 Board, not later than October 1 in the year 2018 and each fifth year thereafter, shall adjust the 911 charge to produce an increase in the baseline 911 revenues sufficient to increase the amount distributed to each district under this chapter during the immediately preceding fiscal year by an amount equal to the rate of growth, determined as a percentage, in the Consumer Price Index for Urban Consumers (CPI-U) for such five-year period. Once adjusted as provided in this section, the resulting revenues shall become the baseline 911 revenues until amended or adjusted under the procedures established in this chapter.

(3) Any adjustments to the statewide 911 charge pursuant to this subsection shall follow the same procedures, standards, and deadlines provided in subsection (a) for review of the initial statewide 911 charge, with the exception that the adjustment shall be effective at a date set by the board at least 90 days after, as applicable, the expiration of the time period for action by the Permanent Oversight Committee on the adjustment or the 911 Board's action in adopting a final adjustment following action by the Permanent Oversight Committee. In addition, the 911 Board, not less than 90 days prior to the effective date of any such increase or decrease in the rate of the statewide 911 charge, shall notify each voice communications service provider and CMRS provider of such increase or decrease, as the case may be. Notwithstanding any provision of this subsection to the contrary, in no event shall the revenues produced by the statewide 911 charge exceed the amounts deemed by the 911 Board to be necessary to satisfy the requirements of this chapter.

(d) A voice communications service provider has no obligation to take any legal action to enforce the collection of the statewide 911 charge billed to a subscriber. The 911 Board may initiate a collection action, and reasonable costs and attorney's fees associated with that collection may be assessed against the subscriber. A voice communications service provider shall quarterly report to the 911 Board the amount of the provider's uncollected service charges. The 911 Board may request, to the extent permitted by federal and state privacy laws, the name, address, and telephone number of a subscriber who refuses to pay the statewide 911 charge.

(e) No district may impose a service charge or other fee on a subscriber to support a 911 system.

(f) At any time after October 1, 2013, should the 911 Board determine that the revenues allocated to CMRS providers under subdivision (7) of subsection (b) of Section 11-98-5.2 for reimbursement to CMRS providers exceed those necessary to meet funding requirements, it may distribute any excess revenues in accordance with subdivision (1) of subsection (b) of Section 11-98-5.2.

*(Acts 1984, No. 84-369, p. 854, §3; Acts 1992, No. 92-562, p. 1165, §1; Acts 1992, 2nd Ex. Sess., No. 92-706, p. 181, §1; Acts 1995, No. 95-667, p. 1378, §1; Acts 1996, 1st Ex. Sess., No. 96-47, p. 62, §3; Act 2012-293, p. 592, §1.)*

#### **Section 11-98-5.1**

#### **(Repealed effective October 1, 2013) Maximum tariff rates.**

Repealed by Act 2012-293, §3, effective October 1, 2012.

*(Act 2005-111, p. 177, §1.)*

#### **Section 11-98-5.2**

#### **911 Fund.**

(a) Effective October 1, 2013, the 911 Fund shall be created as an insured interest-bearing account into which the 911 Board shall deposit all revenues derived from the service charge levied on voice communications service providers under this chapter and all prepaid wireless 911 charges received from the department. The revenues deposited into the 911 Fund shall not be monies or property of the state and shall not be subject to appropriation by the Legislature. The 911 Board shall administer the fund and shall credit the 911 Fund all revenues received. The fund and revenues generated by the fund may only be used as provided in this chapter.

(b) Effective October 1, 2013, there shall first be deducted, no more than one time during each calendar month, from the total amount of the statewide 911 charges paid over to the 911 Board during such month, a sum not to exceed one percent of the total amount, to be applied by the 911 Board exclusively for payment of administrative expenses theretofore incurred by it and, at the board's discretion, the awarding of additional operational grants to districts outside of the other distribution criteria in this subsection upon a showing of hardship. The balance of the total amount of the statewide 911 charges paid over to the 911 Board during each calendar month shall be deposited into the 911 Fund and shall be apportioned and distributed in accordance with the succeeding provisions of this subsection.

(1) There shall be distributed each month among all then existing districts, from the moneys then on deposit in the 911 Fund, an aggregate amount equal to the sum of a. 80 percent of the portion of the statewide 911 charges remitted to the 911 Board with respect to the month by CMRS providers and for prepaid wireless 911 charges, plus b. 100 percent of all other statewide 911 charges remitted to the 911 Board with respect to the month.



(2) There shall be paid each month to each then existing district, out of the amount described in subdivision (1), one-twelfth of the sum of the base distribution amount defined, as applicable, in subdivisions (3) and (4), plus the per capita distribution amount defined in subdivision (5).

(3) The term base distribution amount, as used in this section with respect to any district with a functioning 911 system as of September 30, 2011, and except as otherwise provided in this subdivision and subdivision (4), means the highest dollar amount per annum of emergency telephone service charges, excluding any fees received from the CMRS Fund, if any, received by the district during the five prior consecutive fiscal years ending on September 30, 2011; provided, that, if the district first levied any such service charge, or if the district by vote of the commissioners of the district, during the fiscal year ending on September 30, 2011, or seven months thereafter, increased the rate of the charge effective on or before January 1, 2013, then the total dollar amount of the emergency telephone service charges with respect to the fiscal year ending September 30, 2011, shall be deemed to be the amount that would have been collected had the increased rate been in effect for the entire fiscal year ending September 30, 2011. Any vote of the commissioners authorizing an increase in fees under the preceding sentence may be contingent upon the enactment of Act 2012-293. No adjustment shall be made under the preceding sentence to take into account any increase in an emergency service charge adopted by a district after January 1, 2012, if such district shall have otherwise increased its emergency service charge since January 1, 2011. For any district established prior to September 30, 2011, but which initiated 911 service between September 30, 2011, and June 1, 2012, the base distribution amount shall be deemed to be the amount that would have been collected if the 911 charge imposed by the district on August 1, 2012, had been in effect for the entire fiscal year. For any county or municipal district that was funding an E-911 system on September 30, 2011, without a separate 911 fee, the base distribution amount shall be the product of: That amount determined by the board to be the county or municipality's total funding of its E-911 system for purposes of calculation of the initial statewide rate under subsection (a) of Section 11-98-5, multiplied by a fraction, the numerator of which is the total wireline 911 fees paid to all districts as of September 30, 2011, and the denominator of which is the total wireline and wireless 911 fees determined by the board to have been paid to all districts and the CMRS Board for the same period. Within 90 days of the effective date of any adjustment in the statewide 911 charge to increase the baseline 911 revenues under subdivision (2) of subsection (c) of Section 11-98-5, the base distribution amount shall be increased by an amount equal to the product of: a. the total amount distributed to the district in the immediately preceding fiscal year, multiplied by b. the rate of growth, determined as a percentage, in the CPI-U utilized by the 911 Board for the prior five-year period pursuant to subdivision (2) of subsection (c) of Section 11-98-5.

(4)a. Any district that has, prior to March 1, 2011, entered into one or more contracts, including, without limitation, any lease, lease-purchase, or purchase agreement or contract, to acquire equipment utilized or to be utilized as part of a single, comprehensive, countywide radio system to be operated within the boundaries of the district, may, no later than December 31, 2012, provide the 911 Board a copy of a pro forma financial statement setting forth revenue and expense projections demonstrating the ability of the district to pay all principal and interest maturing or coming due with respect to any contracts, and any bonds or other obligations issued or incurred by the district to evidence the borrowing of money by the district in connection with the planning, acquisition, construction, and equipment of the countywide radio system, and other system costs. Such revenue projections shall set forth the district's annualized revenues that would be included in the base distribution amount as calculated in subdivision (3), for the fiscal year of the district ending on September 30, 2011, or any fiscal year thereafter during which the contracts, bonds, or other obligations are expected to be outstanding and unpaid, and the amount received by the district during the fiscal year ending September 30, 2011, from the CMRS Fund. The pro



forma statement shall be accompanied by such supporting information as may be reasonably requested by the 911 Board, whose review shall be limited to the accuracy and reasonableness of the revenue and expense projections contained therein solely for the purposes of this subsection and which shall not extend to the approval or disapproval of any projects authorized by the district under existing law.

b. For a district meeting the requirements of this subdivision, the base distribution amount for the district, during any fiscal year or years in which the contracts, bonds, or other obligations outstanding and unpaid, shall be increased by the difference, if any, between the revenue projections shown in the pro forma financial statement and the base distribution amount as calculated under subdivision (3), and the district's per capita distribution amount, as defined in subdivision (5), shall be reduced by an amount equal to the difference, with the amount of the reduction added to the amount available for payment to other districts under subdivision (5).

(5) The term per capita distribution amount, as used in this section with respect to any district, means the district's pro rata share, computed according to the distribution formula, of the amount described in subdivision (1) that remains after payment in full of the aggregate base distribution amounts required to be paid to all districts.

(6) Notwithstanding the preceding provisions of this subsection, there shall never be paid to any district, during any fiscal year, from the moneys deposited into the 911 Fund, an amount less than the sum of the total dollar amount of the initial base distribution amount received by the district as calculated under subdivision (3) plus, without duplication, amount received by the district from the CMRS Fund during the fiscal year ending September 30, 2011. For any county or municipal district that was funding an E-911 system on September 30, 2011, without a separate 911 fee, there shall never be paid from the moneys deposited into the 911 Fund, during any fiscal year, an amount less than the sum that amount determined by the board to be the county or municipality's funding of its E-911 system for purposes of calculation of the initial statewide rate under this section.

(7) Except as otherwise provided in subdivision (6), there shall be set aside and deposited each month, into a separate account, which may, but need not, form a part of the 911 Fund, an amount equal to 20 percent of the portion of the statewide 911 charges remitted to the 911 Board with respect to the month by CMRS providers. All moneys in the separate account shall be used exclusively for payment of actual and direct costs incurred by CMRS providers in complying with wireless E-911 service requirements established by the FCC Order and complying with any rules or regulations adopted at any time by the FCC pursuant to the FCC Order; and the costs may include, without limitation, costs and expenses incurred in connection with designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide Phase II Enhanced 911, and the incremental costs of operating Phase II Enhanced 911.

(c) Each CMRS provider wishing to participate in the payments provided in subdivision (7) of subsection (b) for expenses related to providing Phase II Enhanced 911 shall certify to the 911 Board that it does not then collect a cost-recovery or other similar separate charge from its customers. CMRS providers failing to provide the certification by October 1 are ineligible to receive any payments until such certificate is provided to the 911 Board. Any CMRS provider electing to collect cost-recovery or other similar separate charges at any time following its October 1 certification shall immediately notify the 911 Board and is ineligible to participate in the payments established in this subsection until ceasing the collection from its customers and providing the notice required herein. This requirement shall only apply to payments for expenses related to providing Phase II Enhanced 911.

(d) Any CMRS provider wishing to receive reimbursement of costs under the guidelines established by subsection (c) shall also comply with Section 11-98-7.

(e) In the event that there are wireless emergency telephone services that cannot be efficiently performed at the district level or there are expenses that cannot be properly allocated at the district level, the 911 Board may determine the smallest practical unit basis for joint implementation and provide reimbursements in accordance with this section.

*(Act 2012-293, p. 592, §2.)*

### **Section 11-98-5.3**

#### **Prepaid wireless telephone service.**

(a) As used in this section, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) DEPARTMENT. The Department of Revenue for the State of Alabama.

(2) PREPAID RETAIL TRANSACTION. The purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(3) PREPAID WIRELESS CONSUMER. A person who purchases prepaid wireless telecommunications service in a retail transaction.

(4) PREPAID WIRELESS TELEPHONE SERVICE. A service that meets all of the following requirements:

a. Authorizes the purchase of CMRS, either exclusively or in conjunction with other services.

b. Must be paid for in advance.

c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(b) Notwithstanding any other provision of this chapter, the current CMRS emergency telephone service charge established under subdivision (1) of subsection (b) of Section 11-98-7 and, upon its implementation, the replacement, statewide 911 charge to be established under subsection (a) of Section 11-98-5 shall be collected on prepaid wireless telephone service on each retail transaction as follows:

(1) The prepaid wireless statewide 911 charge shall be collected on prepaid wireless by the seller from the prepaid wireless consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 911 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the seller, or otherwise disclosed to the prepaid wireless consumer. If a minimal amount of prepaid wireless telephone service is sold for a single, non-itemized price as part of the purchase of a wireless communications device, the seller may

elect not to apply the prepaid communications charge to the initial transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars (\$5) or less, is a minimal amount. If the seller elects to collect such charge, it shall be treated as all other prepaid communications charges under this chapter.

(2) For purposes of subdivision (1), a retail transaction that is effected in person by a prepaid wireless consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of Chapter 23 of Title 40.

(3) The prepaid wireless 911 charge is the liability of the prepaid wireless consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless 911 charges that the seller collects from prepaid wireless consumers as provided in subdivisions (6) and (7) of this subsection, including all charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the prepaid wireless consumer by the seller.

(4) The amount of the prepaid wireless 911 charge that is collected by a seller from a prepaid wireless consumer, if the amount is separately stated on an invoice, receipt, or other similar document provided to the prepaid wireless consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(5) The prepaid wireless 911 charge shall be increased or decreased, as applicable, upon any change to the rate specified in subdivision (1) of subsection (b) of Section 11-98-7 or, upon its implementation, the statewide 911 charge. The increase or decrease shall be effective on the effective date of the change to the postpaid charge or, if later, the first day of the first calendar month to occur at least 60 days after the enactment of the change to the rate specified in subdivision (1) of subsection (b) of Section 11-98-7 or, upon its implementation, the statewide 911 charge. The department shall provide not less than 30 days of advance notice of the increase or decrease on the department's website.

(6) Prepaid wireless 911 charges collected by sellers shall be remitted to the department at the times and in the manner provided by Chapter 23 of Title 40. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to Chapter 23, Title 40.

(7) A seller shall be permitted to deduct and retain four percent of prepaid wireless 911 charges that are collected by the seller from prepaid wireless consumers.

(8) The audit and appeal procedures applicable to Chapter 23 of Title 40 shall apply to prepaid wireless 911 charges.

(9) The department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sales for resale transactions for sales and use tax purposes under Chapter 23 of Title 40.

(10) The department shall pay all remitted prepaid wireless 911 charges over to the Commercial Mobile Radio Services Board and, upon the effective date of the statewide 911 charge, to the statewide 911 Board, within 30 days of receipt, for use by the board in accordance with the purposes permitted by this chapter, after deducting an amount, not to exceed two percent of collected charges, that shall be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless 911 charges.

(c) The enactment of this section does not constitute an expression as to the application of the CMRS service charge to prepaid service before the adoption of Act 2012-293.

*(Act 2012-293, §2.)*

#### **Section 11-98-7**

##### **Reimbursement of CMRS providers from 911 Fund.**

(a) CMRS providers are eligible for reimbursement from the 911 Fund as set forth in subsections (b) and (c) of Section 11-98-5.2. To obtain reimbursement, a CMRS provider shall comply with all of the following:

(1) Invoices shall be sworn.

(2) All costs and expenses must be commercially reasonable.

(3) All invoices for reimbursement shall be directly related to compliance with the requirements of enhanced 911 service.

(4) The board shall adopt rules providing for prior approval of any expenditures for which the CMRS provider intends to seek reimbursement in excess of a threshold amount.

(5) All invoices shall be supported by such reasonable supporting documents as required by the board and shall be subject to audit.

(b) If the total amount of invoices submitted to the 911 Board and approved for payment in a month exceeds the amount available from the 911 Fund for reimbursements to CMRS providers, the amount payable to each CMRS provider shall be reduced proportionately so that the amount paid does not exceed the amount available for payment. The balance of the payment is deferred to the following month. A deferred payment accrues interest at a rate equal to the rate earned by the 911 Fund until it is paid.

*(Acts 1984, No. 84-369, p. 854, §6; Act 98-338, p. 584, §1; Act 2007-459, p. 950, §1; Act 2008-146, p. 233, §3; Act 2012-293, p. 592, §1.)*

#### **Section 11-98-7.1**

**(Repealed effective October 1, 2013) Phase II Enhanced 911 Implementation Fund; reimbursement of costs; disposition of funds.**

Repealed by Act 2012-293, §3, effective October 1, 2012.

*(Act 2007-459, p. 950, §2.)*

**Section 11-98-7.2**

**Alabama Emergency Communication District Long-Range Study Commission.**

Repealed by Act 2007-459, §3(g) effective June 1, 2008.

*(Act 2007-459, p. 950, §3.)*

**Section 11-98-8**

**(Repealed effective October 1, 2013) Commercial Mobile Radio Service - Duties of providers; service charges.**

Repealed by Act 2012-293, §3, effective October 1, 2012.

*(Act 98-338, p. 584, §2; Act 2007-459, p. 950, §1.)*

**Section 11-98-9**

**Technical proprietary information.**

All technical proprietary information submitted to the board or to the independent third-party auditor as provided by Section 11-98-13 shall be retained by the board and the auditor in confidence and shall be subject to review only by the Examiners of Public Accounts. Notwithstanding any other provision of the law, no technical proprietary information submitted shall be subject to subpoena or otherwise released to any person other than to the submitting voice communication provider, the board, and the independent third-party auditor without the express permission of the administrator and the submitting voice communication provider. General information collected by the independent third-party auditor shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual voice communication provider. Notwithstanding any other provision of the law, no district, political subdivision, voice communication provider, or its employees, directors, officers, or agents shall be liable for any damages in a civil action or subject to criminal prosecution resulting from death, injury, or loss to persons or property incurred by any person in connection with establishing, developing, implementing, maintaining, operating, and otherwise

providing 911 service in compliance with the requirements established by the FCC or other state or federal requirement, except in the case of willful or wanton misconduct.

*(Act 98-338, p. 584, §2; Act 2012-293, p. 592, §1.)*

#### **Section 11-98-10**

##### **Restrictions on 911 use; secondary backup emergency number authorized; certain automatic alerting devices connected to network prohibited; possible penalties for misuse.**

(a) The telephone number 911 is restricted to emergency calls that may result in dispatch of the appropriate response for: fire suppression and rescue, emergency medical services or ambulances, hazardous material, disaster, or major emergency occurrences, and law enforcement activities.

(b) The digits 911 shall be the primary emergency telephone number, but the involved agencies may maintain a separate secondary backup number and shall maintain a separate number for non-emergency telephone calls.

(c) No person shall connect to a service supplier's network or to a CMRS provider's network any automatic alarm, or other automatic alerting device that automatically dials, without human initiation, and provides a pre-recorded message in order to directly access the services that may be obtained through dialing 911.

(d) The making of a false alarm, complaint, or knowingly reporting false information using the E-911 system, may subject the caller to penalties as provided by law.

*(Act 98-338, p. 584, §2.)*

#### **Section 11-98-11**

##### **Methods of response to emergency calls.**

(a) The emergency telephone system shall be designed to have the capability of utilizing at least one of the following four methods in response to emergency calls:

(1) Direct dispatch method, which is a telephone service to a centralized dispatch center providing for the dispatch of an appropriate emergency service unit upon receipt of a telephone request for such services and a decision as to the proper action to be taken.

(2) Relay method, which is a telephone service whereby pertinent information is noted by the recipient of a telephone request for emergency services, and is relayed to appropriate public safety agencies or other providers of emergency services for dispatch of an emergency service unit.

(3) Transfer method, which is a telephone service which receives telephone requests for emergency services and directly transfers such requests to an appropriate public safety agency or other provider of emergency services.

(4) Referral method, which is a telephone service which, upon the receipt of a telephone request for emergency services, provides the requesting party with the telephone number of the appropriate public safety agency or other provider of emergency services.

(b) The board of commissioners of the district shall select the method which it determines to be the most feasible for the county or municipality.

*(Act 98-338, p. 584, §2.)*

#### **Section 11-98-12**

##### **Release of audio recording; public records; transcript.**

(a) After April 21, 2010, an emergency communications district may not release the audio recording of a 911 telephone call except pursuant to a court order finding that the right of the public to the release of the recording outweighs the privacy interests of the individual who made the 911 call or any person involved in the facts or circumstances relating to the 911 call. This section shall not apply to law enforcement personnel conducting an investigation where the 911 telephone call is or may be relevant to the investigation.

(b) An audio recording may be released without a court order to the caller whose voice is on the 911 audio recording or, in the event that the caller is deceased or incapacitated, to the legal representative of the caller or the caller's estate, provided the person seeking the 911 audio recording submits a sworn affidavit to include sufficient information so that the emergency communications district director may verify the statements which attest to the following facts:

(1) That the person signing the affidavit is the caller or that the caller is deceased or incapacitated and the person signing the affidavit is the legal representative of the caller or the caller's estate.

(2) That release of the 911 audio recording is pertinent to the investigation of a legal matter resulting from the events necessitating the making of the 911 call at issue.

(c) Notwithstanding subsection (a), any written or electronic record detailing the circumstances, response, or other events related to a 911 call which is kept by the emergency communications district in its regular course of business shall be deemed a public writing under Section 36-12-40, and subject to public inspection as otherwise provided by law.

(d) Upon payment of a reasonable fee, not to exceed the actual cost of transcription, an emergency communications district shall provide a transcript of any requested audio recording of a 911 telephone call which is retained by the emergency communications district.

*(Act 2010-502, p. 806, §1.)*



### **Section 11-98-13**

#### **Biennial audit.**

On a biennial basis, if not more frequently, the 911 Board shall retain an independent, third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any and all information, including all proprietary information, that is required to be collected, or that may have been submitted to the board by voice communication providers and districts, and the accuracy of the collection of the 911 service charge required to be collected.

*(Act 2012-293, p. 592, §2.)*

### **Section 11-98-13.1**

#### **Permanent Oversight Commission on 911.**

(a) The Permanent Oversight Commission on 911 is established. The commission shall do the following:

(1) Study the operational and financial condition of the current 911 systems within the State of Alabama and publish a report detailing the same.

(2) Study the rate charged for 911 services and make recommendations to the board regarding adjustments to the rate.

(3) Develop recommendations for the most efficient and effective delivery of 911 services in Alabama over both the long- and short-term.

(4) Study the charges levied by each telecommunications provider to each communications district for both data base and network charges.

(5) Develop legislation necessary to implement its long-term 911 plan.

(6) Report its findings, recommendations, and proposed legislation to the Legislature prior to the last day of the 2014 Regular Session.

(b) The commission shall remain in place until the later of the end of the 2014 Regular Session or the time necessary to complete any pending review of a proposed adjustment to the statewide 911 charge adjustment under Section 11-98-5 after which the duties, responsibilities, and powers of the Permanent Oversight Committee under this chapter shall be assumed by the Joint Committee on Administrative Regulation Review. Any action under this chapter requiring an affirmative vote of six of the members of the Permanent Oversight Committee, following its termination, may be taken by a vote of a majority of the members of the Joint Committee on Administrative Regulation Review, and any requirement for prior submission of a proposed rule to the Permanent Oversight Committee under Section 11-98-

4.1(e)(8), shall be replaced in its entirety by the normal procedure for adoption and legislative review of an agency rule under the Alabama Administrative Procedure Act.

(c) The commission shall be comprised of the following members:

(1) Three members of the House of Representatives, to be appointed by the Speaker of the House of Representatives.

(2) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate.

(3) Three members to be appointed by the Governor, who shall include a representative of the districts and the State 911 Coordinator.

(d) The membership of the commission shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(e) The chair and vice chair of the commission shall be elected at the first meeting by the members of the commission.

(f) Upon request of the chair, the Secretary of the Senate and the Clerk of the House of Representatives shall provide necessary clerical assistance for the work of the commission.

(g) Each legislative member of the commission shall be entitled to his or her regular legislative compensation, his or her per diem, and travel expenses for each day he or she attends a meeting of the commission. Upon requisitions signed by the chair of the commission, these payments shall be paid out of any funds appropriated to the use of the Legislature by means of warrants drawn by the Comptroller on the State Treasury. Notwithstanding the foregoing, no member shall receive additional legislative compensation or per diem when the Legislature is in session or if a member is being paid any other payments on the same dates for attendance on other state business.

(h) The Department of Examiners of Public Accounts shall gather and report to the Permanent Oversight Commission the information necessary to evaluate 911 emergency communications funding across the State of Alabama. Each communications district established pursuant to Section 11-98-2 and the Commercial Mobile Radio Service Emergency Telephone Services Board and the statewide 911 Board, unless exempted by the Department of Examiners of Public Accounts for good cause, shall provide at least the information specified following to the Department of Examiners of Public Accounts no later than 180 days after May 8, 2012.

(1) For wireline 911 and for fiscal years ending 2009, 2010, and 2011, the information provided by communications districts shall include:

a. 911 rates in effect for residence telephone service and for business telephone service in the communications district for each fiscal year.

b. 911 revenues collected by the communications district by month for each fiscal year.

c. The amount of any funding provided to the communications district by a county or municipality in which the communications district resides by month for each fiscal year.

d. The amount of revenues received by the communications district from the Commercial Mobile Radio Service Emergency Telephone Services Board by month for each fiscal year.

e. The amount of any direct grants from federal or state government and any state matches for federal, state, local, or private grants for each fiscal year.

f. Gifts or other amounts not otherwise reported in this section.

g. Amounts held in any savings or investment accounts or reserve or escrow accounts by fiscal year.

h. Identification and specification in detail how the 911 funds were spent in each fiscal year. The Department of Examiners of Public Accounts shall identify any areas of noncompliance with this chapter.

i. Monthly charges paid to each telecommunications service provider for both data base and network charges.

(2) Each communications district that fails to provide the information required by this section to the Department of Examiners of Public Accounts by the deadline specified in this subsection, unless exempted by the Department of Examiners of Public Accounts for good cause, shall not be eligible to receive distributions from the Commercial Mobile Radio Service Emergency Telephone Services Board after the deadline.

(3) For wireless 911 and for fiscal years ending 2009, 2010, and 2011, the information provided by the Commercial Mobile Radio Service Emergency Telephone Services Board shall include:

a. 911 revenues received by month for each fiscal year segregated between postpaid wireless service and prepaid wireless service.

b. 911 revenues disbursed to each communications district by month by fiscal year.

c. Amounts of any direct grants from federal or state government and any state matches for federal, state, local, or private grants for each fiscal year.

d. Gifts or other amounts not otherwise reported in this section.

e. Amounts held in any savings or investment accounts or reserve or escrow accounts by fiscal year.

f. The amount of funds retained by the board for operation of the board and identify how the funds retained were spent in each fiscal year.

g. The amount of funds that were escrowed for the purpose of reimbursing wireless carriers for cost recovery or implementation for Phase I and Phase II 911 implementation costs and the amounts paid to the wireless carriers for cost recovery in each fiscal year segregated by Phase I and Phase II.

(i) The Commercial Mobile Radio Service Emergency Telephone Services Board and the statewide 911 Board shall track monthly wireless 911 prepaid revenue following implementation of the prepaid 911 point-of-sale mechanism specified in Section 11-98-5.3 and shall file a monthly report with the

Permanent Oversight Commission detailing and comparing prepaid 911 revenues received in the 2012 fiscal year to the prepaid revenues received in the 2011 fiscal year. The first monthly report shall be filed with the commission no later than 60 days following implementation of the point-of-sale system and on a monthly basis thereafter.

(j) The Department of Examiners of Public Accounts shall promulgate rules and a common financial reporting format to establish annual reporting requirements applicable to all communications districts and the Commercial Mobile Radio Service Emergency Telephone Services Board or statewide 911 Board that the committee shall need to monitor 911 surcharge rates, 911 revenues, and the use of 911 funds on an ongoing annual basis. The Department of Examiners of Public Accounts shall gather and report to the commission the information necessary to evaluate 911 emergency communications funding across the State of Alabama on an ongoing basis.

(k) The annual reports of the communications districts and the Commercial Mobile Radio Service Emergency Telephone Services Board and any reports developed by the commission shall be posted no later than 60 days following the end of the fiscal year on a website to be determined by the Department of Examiners of Public Accounts.

(l) To assist in the development of the long-term plan for 911 in the state, the statewide 911 Board and Permanent Oversight Commission may solicit input from members of the 911 districts in the state, from members of the communications industry operating in the state, and, if deemed necessary, from 911 experts outside the state.

*(Act 2012-293, §2.)*

#### **Section 11-98-14**

##### **Sunset provision.**

The 911 Board shall be subject to the Alabama Sunset Law, Chapter 20, Title 41, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2016, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

*(Act 2012-293, §2.)*

#### **Section 11-98-15**

##### **Reimbursement for unused funds retained for 911 Board administrative expenses; annual costs.**

The 911 Board shall reimburse the Department of Examiners of Public Accounts to the extent of any unused funds retained for administrative expenses under this section or Section 11-98-5.2(b) for the amount of actual costs incurred in carrying out the requirements placed upon the Department of Examiners of Public Accounts by this chapter, as evidenced by invoice presented to the board. By January 1, 2013, the Department of Examiners of Public Accounts shall provide the 911 Board with a

projection of its annual costs in meeting the requirements of this chapter, which shall be treated and retained by the 911 Board as an administrative fee in addition to the administrative allowance specified in Section 11-98-5.2(b). The invoiced amount shall be due and payable within 30 days of presentment.

*(Act 2012-293, §2.)*

#### **Section 13A-3-25**

##### **Use of force in defense of premises.**

(a) A person in lawful possession or control of premises, as defined in Section 13A-3-20, or a person who is licensed or privileged to be thereon, may use physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon such premises.

(b) A person may use deadly physical force under the circumstances set forth in subsection (a) of this section only:

(1) In defense of a person, as provided in Section 13A-3-23; or

(2) When he reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser.

*(Acts 1977, No. 607, p. 812, §620.)*

#### **Section 13A-6-2**

##### **Murder.**

(a) A person commits the crime of murder if he or she does any of the following:

(1) With intent to cause the death of another person, he or she causes the death of that person or of another person.

(2) Under circumstances manifesting extreme indifference to human life, he or she recklessly engages in conduct which creates a grave risk of death to a person other than himself or herself, and thereby causes the death of another person.

(3) He or she commits or attempts to commit arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, any other felony clearly dangerous to human life and, in the course of and in furtherance of the crime that he or she is committing or attempting to commit, or in immediate flight therefrom, he or she, or another participant if there be any, causes the death of any person.

(4) He or she commits the crime of arson and a qualified governmental or volunteer firefighter or other public safety officer dies while performing his or her duty resulting from the arson.

(b) A person does not commit murder under subdivisions (a)(1) or (a)(2) of this section if he or she was moved to act by a sudden heat of passion caused by provocation recognized by law, and before there had been a reasonable time for the passion to cool and for reason to reassert itself. The burden of injecting the issue of killing under legal provocation is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for, or preclude a conviction of, manslaughter or other crime.

(c) Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravated circumstances, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto.

*(Acts 1977, No. 607, p. 812, §2005; Act 2006-427, p. 1057, §1.)*

#### **Section 13A-6-20**

##### **Assault in the first degree.**

(a) A person commits the crime of assault in the first degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such an injury to any person; or

(3) Under circumstances manifesting extreme indifference to the value of human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or

(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life, or of immediate flight therefrom, he causes a serious physical injury to another person; or

(5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 he causes serious bodily injury to the person of another with a motor vehicle.

(b) Assault in the first degree is a Class B felony.

*(Acts 1977, No. 607, p. 812, §2101; Acts 1987, No. 87-712, p. 1259.)*

## **Section 13A-6-21**

### **Assault in the second degree.**

(a) A person commits the crime of assault in the second degree if the person does any of the following:

(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person.

(2) With intent to cause physical injury to another person, he or she causes physical injury to any person by means of a deadly weapon or a dangerous instrument.

(3) He or she recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

(4) With intent to prevent a peace officer, as defined in Section 36-21-60, a detention or correctional officer at any municipal or county jail or state penitentiary, emergency medical personnel, a utility worker, or a firefighter from performing a lawful duty, he or she intends to cause physical injury and he or she causes physical injury to any person. For the purpose of this subdivision, a person who is a peace officer who is employed or under contract while off duty by a private or public entity is a peace officer performing a lawful duty when the person is working in his or her approved uniform while off duty with the approval of his or her employing law enforcement agency. Provided, however, that nothing contained herein shall be deemed or construed as amending, modifying, or extending the classification of a peace officer as off-duty for workers compensation purposes or any other benefits to which a peace officer may otherwise be entitled to under law when considered on-duty. Additionally, nothing contained herein shall be deemed or construed as amending, modifying, or extending the tort liability of any municipality as a result of any action or inaction on the part of an off-duty police officer.

(5) With intent to cause physical injury to a teacher or to an employee of a public educational institution during or as a result of the performance of his or her duty, he or she causes physical injury to any person.

(6) With intent to cause physical injury to a health care worker, including a nurse, physician, technician, or any other person employed by or practicing at a hospital as defined in Section 22-21-20; a county or district health department; a long-term care facility; or a physician's office, clinic, or outpatient treatment facility during the course of or as a result of the performance of the duties of the health care worker or other person employed by or practicing at the hospital; the county or district health department; any health care facility owned or operated by the State of Alabama; the long-term care facility; or the physician's office, clinic, or outpatient treatment facility; he or she causes physical injury to any person. This subdivision shall not apply to assaults by patients who are impaired by medication or to assaults on home health care workers while they are in private residences.

(7) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him or her, without his or her consent, a drug, substance or preparation capable of producing the intended harm.



(b) Assault in the second degree is a Class C felony.

(c) For the purposes of this section, utility worker means any person who is employed by an entity that owns, operates, leases, or controls any plant, property, or facility for the generation, transmission, manufacture, production, supply, distribution, sale, storage, conveyance, delivery, or furnishing to or for the public of electricity, natural or manufactured gas, water, steam, sewage, or telephone service, including two or more utilities rendering joint service.

*(Acts 1977, No. 607, p. 812, §2102; Acts 1994, 1st Ex. Sess., No. 94-794, §1; Acts 1996, No. 96-533, p. 744, §1; Act 2006-565, p. 1312, §1; Act 2009-586, p. 1722, §1; Act 2010-565, p. 1145, §1; Act 2011-550, p. 1015, §1.)*

### **Section 13A-7-1**

#### **Definitions.**

The following definitions are applicable to this article:

(1) PREMISES. Such term includes any "building," as herein defined, and any real property.

(2) BUILDING. Any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and such term includes any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein, and such term includes any railroad box car or other rail equipment or trailer or tractor trailer or combination thereof. Where a building consists of two or more units separately occupied or secure, each shall be deemed both a separate building and a part of the main building.

(3) DWELLING. A building which is used or normally used by a person for sleeping, living or lodging therein.

(4) ENTER OR REMAIN UNLAWFULLY. A person "enters or remains unlawfully" in or upon premises when he is not licensed, invited or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privileges unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner.

*(Acts 1977, No. 607, p. 812, §2601; Acts 1983, No. 83-742, p. 1222.)*

### **Section 13A-7-40**

## **Definitions.**

The following definitions are applicable to this article:

(1) **BUILDING.** As used in this article, such term means any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, railway car, aircraft or watercraft used for the lodging of persons or for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit shall not be deemed a separate building.

(2) **EXPLOSIVES.** Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by detonator or by chemical action of any part of the compound or mixture may cause a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(3) **EXPLOSION.** A rapid, sudden and violent expansion of air or relinquishment of energy with resultant pressures that are capable of producing destructive effects on contiguous objects or of destroying life or limb. "Explosion" includes, but is not limited to, a sudden and rapid combustion, causing violent expansion of the air, or the sudden bursting or breaking up or in pieces from an internal or other force. "Explosion" is not limited to cases caused by combustion or fire, but it may result from decomposition or chemical action.

*(Acts 1977, No. 607, p. 812, §2801.)*

### **Section 13A-7-41**

#### **Arson in the first degree.**

(a) A person commits the crime of arson in the first degree if he intentionally damages a building by starting or maintaining a fire or causing an explosion, and when:

(1) Another person is present in such building at the time, and

(2) The actor knows that fact, or the circumstances are such as to render the presence of a person therein a reasonable possibility.

(b) Arson in the first degree is a Class A felony.

*(Acts 1977, No. 607, p. 812, §2805.)*

### **Section 13A-7-42**

### **Arson in the second degree.**

(a) A person commits the crime of arson in the second degree if he intentionally damages a building by starting or maintaining a fire or causing an explosion.

(b) A person does not commit a crime under subsection (a) if:

(1) No person other than himself has a possessory or proprietary interest in the building damaged; or if other persons have those interests, all of them consented to his conduct; and

(2) His sole intent was to destroy or damage the building for a lawful and proper purpose.

(c) The burden of injecting the issue of justification in subsection (b) is on the defendant, but this does not shift the burden of proof.

(d) A person commits the crime of arson in the second degree if he intentionally starts or maintains a fire or causes an explosion which damages property in a detention facility or a penal facility, as defined in Section 13A-10-30, with reckless disregard (because of the nature or extent of the damage caused or which would have been caused but for the intervention of others) for the safety of others.

(e) Arson in the second degree is a Class B felony.

*(Acts 1977, No. 607, p. 812, §2806; Acts 1983, 2nd Ex. Sess., No. 83-177, p. 346.)*

### **Section 13A-7-43**

### **Arson in the third degree.**

(a) A person commits the crime of arson in the third degree if he recklessly damages a building by a fire or an explosion.

(b) A person does not commit a crime under this section if no person other than himself has a possessory or proprietary interest in the damaged building.

(c) The burden of injecting the issue of justification in subsection (b) is on the defendant, but this does not shift the burden of proof.

(d) Arson in the third degree is a Class A misdemeanor.

*(Acts 1977, No. 607, p. 812, §2807.)*

### **Section 13A-7-44**

### **Criminal possession of explosives.**

Repealed by Act 2009-718, p. 2115, §23, effective August 1, 2009.

*(Acts 1977, No. 607, p. 812, §2810.)*

#### **Section 13A-10-1**

##### **Definitions.**

The following definitions apply in this article only unless the context otherwise requires:

- (1) FIREMAN. Any officer of a fire department, a member of a volunteer fire department, or any other person vested by law with the duty to extinguish fires.
- (2) GOVERNMENT. The state, county, municipality, or other political subdivision thereof, including public county and city boards of education, the youth services department district, the Alabama Institute for Deaf and Blind, and all educational institutions under the auspices of the State Board of Education.
- (3) GOVERNMENTAL FUNCTION. Any activity which a public servant is legally authorized to undertake on behalf of a government or the fire control activities of a member of a volunteer fire department.
- (4) GOVERNMENTAL RECORD. Any record, paper, document, or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government. Any educational attendance, membership, or financial report, or a student's school transcript.
- (5) PEACE OFFICER. Any public servant vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.
- (6) PROPERTY. Any real or personal property, including books, records, and documents.
- (7) PUBLIC SERVANT. Any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function.

*(Acts 1977, No. 607, p. 812, §4501; Acts 1987, No. 87-804, p. 1578; Act 2006-423, §1.)*

#### **Section 13A-10-6**

##### **Refusing to assist in fire control.**

- (a) A person commits the crime of refusing to assist in fire control if, upon command by a fireman or peace officer identified to him as such, he intentionally disobeys a reasonable order or regulation made in relation to the conduct of persons in the vicinity of a fire.

(b) Refusing to assist in fire control is a Class C misdemeanor.

*(Acts 1977, No. 607, p. 812, §4525.)*

#### **Section 13A-10-8**

##### **Rendering a false alarm.**

(a) A person commits the crime of rendering a false alarm if he knowingly causes a false alarm of fire or other emergency involving danger to person or property to be transmitted to or within an official or volunteer fire department or any other governmental agency or to be transmitted to or within a hospital or nursing home or any building housing handicapped or immobile people.

(b) Rendering a false alarm except a false alarm concerning a hospital or nursing home or other building housing handicapped or immobile people to or within an official or volunteer fire department or any other governmental agency is a Class A misdemeanor. Rendering a false alarm concerning or to or within a hospital or nursing home or any building housing handicapped or immobile people shall be a Class C felony.

*(Acts 1977, No. 607, p. 812, §4535; Acts 1979, No. 79-664, p. 1163, §1; Acts 1981, No. 81-658.)*

#### **Section 13A-11-11**

##### **Falsely reporting an incident.**

(a) A person commits the crime of falsely reporting an incident if with knowledge that the information reported, conveyed, or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, bomb, explosion, crime, catastrophe, or emergency or the alleged release or impending release of a hazardous or dangerous substance, including, but not limited to, chemical, biological, or bacteriological substance or any nerve agent under circumstances in which it is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(b) Falsely reporting an incident is a Class A misdemeanor except that falsely reporting an incident of a bomb or explosion or the alleged release or impending release of a hazardous or dangerous substance is a Class C felony. Notwithstanding any other provision of law to the contrary, if the objective or target of the person listed in subsection (a) is to interfere with the attendance, operation, activities, or other business conducted at a public or private school, university, college, or other educational institution in this state, no part of a sentence imposed pursuant to subsection (a) or this subsection shall be probated, deferred, suspended, or withheld, and no person sentenced pursuant to subsection (a) or this subsection shall be eligible for early release, leave, work release, earned time, good time, or any other program administered by an agency of the executive or judicial branches of this state which would have the effect of reducing or mitigating the sentence until the defendant has completed the minimum sentence pursuant to subsection (a) or this subsection.

*(Acts 1977, No. 607, p. 812, §5550; Act 2000-113, p. 166, §1; Act 2009-718, §21.)*

#### **Section 13A-11-222**

##### **Unlawfully refusing to yield party line.**

- (a) A person commits the crime of refusing to yield a party line if he intentionally refuses immediately to yield a party line after he is informed that it is needed for an emergency call.
- (b) The term "party line" means a subscriber's line telephone circuit consisting of two or more main telephone stations connected therewith, each having a distinctive ring or telephone number.
- (c) The term "emergency call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.
- (d) It shall be a defense to a prosecution under this section that at the time of the request the line was being used for another emergency call. The burden of injecting this defense shall be upon the defendant, but this does not shift the burden of proof.
- (e) Unlawfully refusing to yield a party line is a Class B misdemeanor.

*(Acts 1977, No. 607, p. 812, §5810.)*

#### **Section 13A-11-223**

##### **Falsely requesting use of party line for emergency.**

- (a) A person commits the crime of falsely requesting use of party line for emergency if he states that a party line is needed for an emergency call knowing such statement to be false.
- (b) The term "party line," as defined in Section 13A-11-222, is incorporated in this section.
- (c) The term "emergency call," as defined in Section 13A-11-222, is incorporated in this section.
- (d) Falsely requesting use of party line for emergency is a Class B misdemeanor.

*(Acts 1977, No. 607, p. 812, §5815.)*

#### **Section 14-6-8**

##### **Removal of prisoners - Fire.**

When the county jail or any building contiguous thereto is on fire and there is reason to apprehend that the prisoners may be thereby injured or endangered, the sheriff or jailer may remove them to a safe and convenient place and confine them there so long as may be necessary to avoid the danger.

*(Code 1852, §248; Code 1867, §3796; Code 1876, §4496; Code 1886, §4544; Code 1896, §4955; Code 1907, §7200; Code 1923, §4810; Code 1940, T. 45, §128.)*

#### **Section 14-7-16.1**

### **Volunteer fire department and rescue squad organizations purchase of goods and services offered by Correctional Industries Division.**

Any volunteer fire department and rescue squad organizations operating in this state which have been granted an exemption under the provision of Section 40-18-32 or approved by the Federal Internal Revenue Service may purchase goods and services offered by the Alabama Correctional Industries Division of the Department of Corrections.

*(Acts 1990, No. 90-575, p. 980.)*

#### **Section 15-3-5**

### **Offenses having no limitation.**

(a) There is no limitation of time within which a prosecution must be commenced for:

- (1) Any capital offense;
- (2) Any felony involving the use, attempted use, or threat of, violence to a person;
- (3) Any felony involving serious physical injury or death of a person;
- (4) Any sex offense involving a victim under 16 years of age, regardless of whether it involves force or serious physical injury or death;
- (5) Any felony involving arson of any type;
- (6) Any felony involving forgery of any type;
- (7) Any felony involving counterfeiting; and
- (8) Any felony involving drug trafficking.

(b) The amendments made by this act shall apply:

- (1) To all crimes committed after January 7, 1985; and
- (2) To all crimes committed before January 7, 1985, for which no statute of limitations provided under pre-existing law has run as of January 7, 1985.



(c) Nothing herein shall be construed to mean that the adoption of this act indicates that any former statute of limitations applying to capital offenses is invalid as the result of any decision of any court invalidating the capital punishment statutes of the State of Alabama.

*(Code 1852, §401; Code 1867, §3949; Code 1876, §4640; Code 1886, §3707; Code 1896, §5067; Code 1907, §7344; Code 1923, §4928; Code 1940, T. 15, §219; Acts 1984, 2nd Ex. Sess., No. 85-14, p. 16, §§1, 2, 4.)*

## **Section 22-11A-60**

### **Definitions.**

As used in this article, the following words shall have the following meanings:

(1) **HEALTH CARE FACILITY.** A hospital, nursing home, ambulatory surgical center, outpatient surgical facility, ambulance service, rescue squad, paid fire department, volunteer fire department, or any other clinic, office, or facility in which medical, dental, nursing, or podiatric services are offered.

(2) **HEALTH CARE WORKER.** Physicians, dentists, nurses, respiratory therapists, phlebotomists, surgical technicians, physician assistants, podiatrist, dialysis technicians, emergency medical technicians, paramedics, ambulance drivers, dental hygienists, dental assistants, students in the healing arts, or any other individual who provides or assists in the provision of medical, dental, or nursing services.

(3) **HEPATITIS B VIRUS (HBV) INFECTION.** The presence of the HBV as determined by the presence of hepatitis B(e) antigen for six months or longer or by other means as determined by the State Board of Health.

(4) **HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION.** The presence of antibodies to Human Immunodeficiency Virus as determined by enzyme immunoassay and Western Blot or the presence of the HIV infection as determined by viral culture, or by other means as determined by the State Board of Health.

(5) **INFECTED HEALTH CARE WORKER.** A health care worker infected with HIV or HBV as defined herein.

(6) **INVASIVE PROCEDURES.**

(a) Those medical or surgical procedures characterized by the digital palpation of a needle tip in a body cavity or by the simultaneous presence of the health care worker's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site.

(b) Invasive dental procedures shall include those that provide the opportunity for an intraoral percutaneous injury to the dental health care worker and could result in the blood of the health care worker coming in contact with the blood or mucous membrane of the patient as adopted by the Board of Dental Examiners in rules developed pursuant to Section 22-11A-70.

(c) These procedures shall not include physical examinations; blood pressure checks; eye examinations; phlebotomy; administering intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; vaginal, oral, or rectal exams; endoscopic or bronchoscopic procedures; or placing and maintaining peripheral and central intravascular lines, nasogastric tubes, endotracheal tubes, rectal tubes, and urinary catheters.

*(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, §1.)*

#### **Section 22-18-1**

#### **Definitions.**

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **ADVANCED EMERGENCY MEDICAL TECHNICIAN.** Any person 18 years of age or older who satisfies all of the following:

- a. Has successfully completed the advanced emergency medical technician course of instruction, or its equivalent, as approved by the State Board of Health.
- b. Has passed the state Advanced EMT examination, as well as having met the requirements for becoming a licensed emergency medical technician.
- c. Has been granted a license by the State Board of Health.

(2) **ADVANCED LIFE SUPPORT (ALS).** The treatment of potentially life-threatening medical emergencies through the use of invasive medical techniques specified as advanced life support techniques by the Board of Health, which ordinarily would be performed or provided by licensed physicians, but which may be performed by emergency medical service personnel during emergencies under constraints specified by rule of the board.

(3) **AIR AMBULANCE.** An aircraft that is intended to be used for and is maintained or operated for transportation to a medical care facility of persons who are sick or injured. For the purposes of this chapter, fixed-wing aircraft that do not conduct scene flights shall not be considered air ambulances.

(4) **BASIC LIFE SUPPORT (BLS).** Prehospital care involving non-invasive life support measures as specified by the board.

(5) **BOARD or BOARD OF HEALTH.** The State Board of Health.

(6) **DEPARTMENT.** The Alabama Department of Public Health.

(7) **EMERGENCY MEDICAL SERVICES (EMS).** A system of coordinated response to provide prehospital emergency aid and medical assistance from primary response to definitive care, involving personnel trained in the rescue, stabilization, transportation, and treatment of sick or injured persons.

(8) **EMERGENCY MEDICAL SERVICES PERSONNEL (EMSP).** The collective term used to refer to licensed emergency medical technicians, emergency medical technicians intermediate, advanced emergency medical technicians, paramedics, and any level of licensure as recognized by the National Highway Traffic Safety Administration for individuals who provide emergency medical services or who initiate immediate lifesaving care.

(9) **EMERGENCY MEDICAL TECHNICIAN (EMT).** Any person 18 years of age or older who satisfies all of the following:

a. Has successfully completed the basic emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health.

b. Has passed the state EMT examination.

c. Has been granted a license by the Board of Health.

(10) **GROUND AMBULANCE.** A motor vehicle that is intended to be used for and is maintained or operated for transportation to a medical care facility of persons who are sick or injured.

(11) **LICENSED EMERGENCY MEDICAL TECHNICIAN-INTERMEDIATE.** Any person 18 years of age or older who, prior to December 31, 2002, satisfies all of the following:

a. Has successfully completed the intermediate emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health.

b. Has passed the state EMT Intermediate examination, as well as having met the requirements for becoming a licensed emergency medical technician.

c. has been granted a license by the Board of Health.

(12) **NON-TRANSPORT VEHICLE.** A vehicle operated with the intent to provide BLS or ALS stabilization on scene, but not intended to transport a patient to a medical care facility.

(13) **PARAMEDIC.** Any person 18 years of age or older who has successfully completed the paramedic course of instruction, or its equivalent, as approved by the Board of Health, and passed the state EMT-paramedic examination, and who has been granted a license by the Board of Health.

(14) **PATIENT.** An individual who receives or requests medical care, or for whom medical care is requested, because the individual is sick or injured.

(15) **PHYSICIAN.** An individual licensed to practice medicine by the Medical Licensure Commission of Alabama.

(16) **PROVIDER SERVICE.** An organization, whether public or private, which provides transport or non-transport emergency medical services.

(17) **SCENE FLIGHT.** The flight of an air ambulance to the physical location of a sick or injured person.

(18) TRANSPORT VEHICLE. An air or ground ambulance.

*(Acts 1971, No. 1590, p. 2717, §1; Acts 1995, No. 95-276, p. 488, §1; Act 2010-584, p. 1304, §1.)*

#### **Section 22-18-2**

##### **Exceptions to applicability of chapter.**

The provisions of this article shall not apply to volunteer rescue squads that are members of the Alabama Association of Rescue Squads, Inc., and which furnish BLS ambulance service to the public; nor shall the provisions of this chapter apply to businesses or companies which only provide free ambulance service to their employees who require medical attention on business or company grounds; nor shall the provisions of this chapter apply to or govern ambulances owned by a county, a municipality, or any other political subdivision of the state.

*(Acts 1971, No. 1590, p. 2717, §6; Acts 1973, No. 526, p. 767; Acts 1975, 4th Ex. Sess., No. 120, p. 2815, §1; Acts 1977, No. 526, p. 698; Acts 1981, No. 81-774, p. 1335; Act 2010-584, p. 1304, §1.)*

#### **Section 22-18-3**

##### **Rules and regulations.**

(a) In the manner provided in this section, the Board of Health, with advice and recommendation of the advisory board, shall establish and publish reasonable rules and regulations for the training, qualification, scope of privilege, and licensing of EMSP, and provider services, and for the operation, design, equipment, and licensing of air and ground ambulances. In adopting rules and regulations, the Board of Health shall follow the provisions of the Alabama Administrative Procedure Act, and shall, in all cases, hold one or more public hearings prior to adoption, amendment, or rescission of any rule or regulation. At such hearing, any interested person, firm, or corporation or any member of the public may be heard. Any person, firm, or corporation affected by any regulation, amendment, or rescission hereof may appeal consideration thereof to the Circuit Court of Montgomery County pursuant to the provisions of the Administrative Procedure Act.

(b) Regulations adopted under this section shall become effective as provided in the Administrative Procedure Act. From any judgment of the circuit court in any case appealed to it, an appeal shall be made pursuant to the Administrative Procedure Act.

*(Acts 1971, No. 1590, p. 2717, §3; Acts 1995, No. 95-276, p. 488, §1; Act 2010-584, p. 1304, §1.)*

#### **Section 22-18-4**

##### **Fees of licenses; disposition of funds; qualifications for EMSP licensure.**

(a) In addition to all other licenses or fees now payable, the Board of Health shall, as prerequisite for issuing a license under the provisions of this article and rules and regulations promulgated pursuant thereto, charge a fee of \$10 for each license valid for a period of 24 months issued to the EMSP and a fee of \$25 for each license issued to any provider service operating an air or ground ambulance. Each license issued to a provider service shall be valid for a period not to exceed 12 calendar months. The same fee shall be charged for renewal of a license as is fixed in this subsection for the original license. No additional fee shall be collected when an EMSP becomes eligible for reclassification of his or her license to a higher level.

(b) All fees collected under this chapter shall be retained in a separate fund by the Board of Health for the purpose of enforcing this chapter and shall be disbursed as other funds of the state are disbursed; provided, that no fee or permit charge authorized under this chapter shall be charged or collected for the issuing of a permit to a volunteer rescue squad, as defined in Section 32-11-1, for providing ambulance service on a gratuitous basis, or any member who volunteers his or her service, unless licensure is requested by the squad, company or individual, whereupon, a fee will be charged.

(c) Any person desiring EMSP licensure shall complete an approved EMSP course as defined by rules of the Board of Health, successfully pass the appropriate level licensure examination as determined by the Board of Health, and submit an application to the board. An approved EMSP course for any level shall be a course conforming to the curriculum for that level approved by the United States Department of Transportation, or approved by any other federal agency as may, in the future, take jurisdiction over EMSP training curriculum development. A curriculum may be required to be supplemented with additional modules if the modules are optional modules approved by the United States Department of Transportation, or its successor as specified above, and the optional modules are prescribed by rule by the board pursuant to the Alabama Administrative Procedure Act.

(d) No air or ground ambulance shall be operated for ambulance purposes and no individual shall fly, drive, operate, attend, or permit same to be operated for the purpose of transporting a patient from any point within the State of Alabama to any other point within the State of Alabama unless such ambulance is duly licensed by the Board of Health. The Board of Health may prescribe exceptions to this requirement consistent with the interests of public health. Any ground ambulance shall at all times be driven by a person holding a valid driver's license and who has passed the Emergency Vehicle Operator Course approved by the Board of Health, or the Apparatus Operator's Course taught by the Alabama Fire College.

*(Acts 1971, No. 1590, p. 2717, §2; Acts 1995, No. 95-276, p. 488, §1; Act 2010-584, p. 1304, §1.)*

#### **Section 22-18-5**

#### **Advisory board.**

(a) There shall be an advisory board of 25 members to assist in the establishment of rules, regulations and standards necessary to carry out the provisions of this article. The board shall meet at least once each year and at the call of the State Health Officer. The State Health Officer shall be an ex officio member of the advisory board. The advisory board shall elect one from its membership to serve as chair for a two-year term. The chair shall not serve consecutive terms.

(b) Composition of the advisory board shall be:

- (1) One member designated by the Alabama Ambulance Association.
- (2) One member designated by the Alabama Association of Rescue Squads.
- (3) One member designated by the Alabama Hospital Association.
- (4) One member designated by the State Committee on Trauma, American College of Surgeons.
- (5) One member designated by the Medical Association of the State of Alabama.
- (6) One member designated by the Director of Public Safety.
- (7) One member designated by the Director of the State Department of Transportation.
- (8) One member designated by the Department of Economic and Community Affairs, Highway Traffic and Safety Program.
- (9) State Health Officer, as ex officio member with voting privileges.
- (10) One member who shall be a paramedic firefighter designated by the Professional Firefighters Association of Alabama.
- (11) One member who shall be an EMT firefighter designated by the Alabama Association of Volunteer Fire Departments.
- (12) One member designated by the Alabama Association of Fire Chiefs.
- (13) Two members designated by the Alabama Council on EMS to represent the designated regional EMS agencies.
- (14) One member designated by the State Committee of Public Health.
- (15) One member designated by the Alabama Chapter of the American College of Emergency Physicians.
- (16) One member designated by the Alabama Chapter of the American Academy of Pediatrics.
- (17) One member from a state approved paramedic training school designated by the Alabama Emergency Medical Services Education Committee.
- (18) One member who shall be an EMT designated by the professional EMT association if a professional EMT association is designated by the Board of Health or pursuant to other procedure established by law.
- (19) One member designated by the Alabama Chapter of the Emergency Nurses Association.

(20) One member designated by the Alabama League of Municipalities.

(21) One member designated by the Association of County Commissions of Alabama.

(22) One member designated by the Alabama Emergency Management Council.

(23) One member designated by the Alabama State Nurses' Association.

(24) One member designated by the Alabama Firefighters Association.

(25) One member designated by the Alabama Society of Hospital Pharmacists.

(c) Each representative shall serve for a period of four years or until his successor is appointed, whichever is sooner.

(d) Each ex officio member's term will be indefinite. In the case of vacancy, the new appointee shall serve for the remainder of the unexpired term. Any vacancy shall be filled by the original organization selecting said member. Members of the advisory board shall serve without compensation but shall be entitled to reimbursement for expenses incurred in the performance of the duties of their office as provided in Article 2 of Chapter 7 of Title 36 of this code.

(e) With the consent of the majority of the members of the advisory board, the chair shall set requirements for proxy representation, voting, and the establishment of a quorum.

*(Acts 1971, No. 1590, p. 2717, §4; Acts 1995, No. 95-276, p. 488, §1.)*

#### **Section 22-18-6**

#### **Violations; good Samaritan provisions; scope of privilege; control of emergency scene; penalties.**

(a) It shall be a Class A misdemeanor for any person, firm, company, corporation, organization, facility, or agency to do any of the following:

(1) Deliberately hinder, obstruct, or interfere with an officer, inspector, or duly authorized agent of the board while in the performance of official duties.

(2) Deliberately hinder, obstruct, or interfere with any physician, licensed nurse, licensed EMSP, or emergency personnel exempt from licensure under the provisions of this article while that person is providing emergency care to a third person or while that person is assisting at the scene of an emergency, directing traffic at the scene of an emergency, or managing or helping to manage the scene of an emergency.

(3) Violate subsection (c) or (d) of this section.

(4) Offer, provide, or perform, without a license or certificate to do so, an emergency medical service or other function which, under the provisions of this article or the rules adopted pursuant thereto, may not



be performed without a license or certificate issued by the Board of Health. No person shall be subject to criminal liability pursuant to this section in the event he or she renders first aid or emergency care at the scene of an injury caused by a motor vehicle crash or by some other incident, or at the scene of a mass casualty or disaster if:

a. The first aid or emergency care is rendered gratuitously and in good faith; and

b. The first aid or emergency care is not rendered in the course of a business, program, or system which regularly engages in the provision of emergency medical care.

(b) Nothing in this section shall be construed to repeal, abridge, or modify Section 6-5-332 or any other good Samaritan statute.

(c) No person shall regularly engage in providing emergency medical care at the scene of emergencies unless he or she is licensed as EMSP as defined in this article, or unless he or she is exempted from licensure pursuant to the provisions of this article. Notwithstanding the foregoing, nothing in this article shall be construed to prohibit any physician or nurse licensed in Alabama from performing any act within his or her scope of practice. No person shall hold himself or herself out to be EMSP, unless he or she is licensed as such as defined in this chapter. EMSP licensed in other jurisdictions may identify themselves as holding such licensure.

(d) The board shall by rule establish the scope of privilege for each level of EMSP licensure. No person shall exceed the scope of privilege granted to his or her level of licensure.

(e) Control of an emergency scene may be taken by EMSP if the personnel arrive at the scene of an emergency prior to the arrival of law enforcement personnel, and if managing the emergency scene will not interfere with other emergency medical care duties. Emergency scene control shall include the authority to direct traffic. A driver of a motor vehicle entering an emergency scene or entering a roadway adjacent to an emergency scene shall use caution, shall maintain proper control of the motor vehicle, and shall obey the directions of law enforcement personnel and emergency personnel at the scene. Any person violating this subsection shall be guilty of a violation.

(f) The board may, following the contested case provisions of the Administrative Procedure Act, suspend or revoke the license or certificate of EMSP at any level, or a provider service, or it may refuse to grant a license or certificate to any person or entity at any time that any of the following is determined with respect to the holder or applicant:

(1) Does not meet or no longer meets the prescribed qualifications.

(2) Is guilty of misconduct as defined by the board's rules or otherwise commits a violation of this act or any rules promulgated thereunder.

(3) Has failed to maintain the required level of continuing education units or any equivalent therefor defined in the board's rules.

(4) Has provided care to a patient or patients under his or her care which falls short of the standard of care which ordinarily would be expected to be provided by similarly situated EMSP in Alabama, and has thereby jeopardized the life, health, or safety of a patient or patients.

- (5) Has sexually or physically abused a patient under his or her care.
- (6) Has submitted a license or test application, a report of continuing education requirements, a run report, a patient care record, EMSP student record, clinical rotation record, intent to train form, self-study document, fluid and drug application, physician medication order form, or any other document which is material to the duties and qualifications of EMSP or those of a student in an EMSP training program and which is fraudulent or knowingly false in any respect.
- (7) Has committed fraud in the performance of his or her duties or in connection with any matter related to emergency medical services.
- (8) Has been convicted of a crime involving moral turpitude, or a crime in which the victim is an EMSP provider service or an EMS patient, unless the board determines that the fact of the conviction would not likely interfere with the performance of EMS duties.
- (9) Has performed any act requiring licensure or certification under state EMS statutes, without possession of the requisite licensure or certification.
- (10) Has performed any act which exceeds the scope of license or privilege granted to the holder.

*(Acts 1971, No. 1590, p. 2717, §5; Acts 1995, No. 95-276, p. 488, §1; Act 2010-584, p. 1304, §1.)*

#### **Section 22-18-20**

##### **Commission created.**

There is hereby created the Alabama Emergency Medical Services Education Commission. Membership on the Alabama Emergency Medical Services Education Commission shall be as follows:

- (1) The State Health Officer, or his or her designee, who shall serve as chair.
- (2) The State Superintendent of Education, or his or her designee.
- (3) Three members appointed by the Governor.
- (4) Two members appointed by the Lieutenant Governor or the President of the Senate.
- (5) Two members appointed by the Speaker of the House of Representatives.

*(Acts 1993, No. 93-663, p. 1146, §3(a).)*

#### **Section 22-18-21**

##### **Travel and per diem expenses.**

Members of the commission shall not receive compensation for their services, but shall be allowed travel and per diem expenses at the same rate paid to state employees, to be paid from funds of the Alabama Department of Public Health.

*(Acts 1993, No. 93-663, p. 1146, §3(b).)*

#### **Section 22-18-22**

##### **Times and places of meetings.**

The commission shall meet at the times and places as it shall establish, or at the call of the chair after not less than five working days notice to all members. In no event shall the commission meet less frequently than twice each fiscal year.

*(Acts 1993, No. 93-663, p. 1146, §3(c).)*

#### **Section 22-18-23**

##### **Expenditure of appropriated funds; grants.**

(a) The commission shall expend the funds that are appropriated for such purpose by the Legislature by making grants to state junior colleges, state technical colleges, and other public institutions of higher learning for the purposes of providing emergency medical services education.

(b) To be eligible for a grant from the commission, an institution shall be certified by the Alabama Department of Public Health as having an emergency medical services primary education program whose graduates are eligible to be examined for state licensure as emergency medical technicians at the EMT-basic, EMT-intermediate, or EMT-paramedic level or a combination thereof.

(c) Grants from the commission shall contain such conditions that in the view of the commission are necessary to assure that grant funds are expended for emergency medical services education purposes. The commission may require audited financial statements as a condition of grant acceptance.

*(Acts 1993, No. 93-663, p. 1146, §3(d).)*

#### **Section 22-18-40**

##### **State Emergency Medical Control Committee.**

(a) The board shall be assisted in formulating rules and policy pertaining to emergency medical services by the State Emergency Medical Control Committee (SEMCC). Members of the SEMCC shall serve without compensation but shall be entitled to reimbursement for expenses incurred in the performance of

the duties of their office at the same rate paid state employees. The chair of SEMCC may establish subcommittees of SEMCC comprised of representatives from ambulance, fire, rescue, and other EMS groups, as needed.

(b) The SEMCC shall be composed as follows:

(1) The medical directors of each EMS region designated by the board as ex officio members with voting privileges.

(2) One member who shall be appointed by the Alabama Chapter of the American College of Emergency Physicians.

(3) One member who shall be appointed by the State Committee on Trauma of the American College of Surgeons.

(4) One member who shall be appointed by the Alabama Chapter of the American Academy of Pediatrics.

(5) The State EMS Medical Director, as an ex officio member with voting privileges, who shall serve as its chair.

(6) The State Trauma Consultant if a physician is designated as such by the Board of Health or pursuant to other procedure established by law as an ex officio member with voting privileges.

(7) One member who shall be an Alabama physician appointed by the Alabama Chapter of the Association of Air Medical Services.

(8) The Chair of the State EMS Advisory Board, as ex officio member with no voting privileges.

(9) One member who shall be appointed by the Alabama Hospital Association.

(c) Each representative shall serve for a period of four years or until his or her successor is appointed, whichever is sooner.

(d) Any vacancy shall be filled by the organization selecting the vacating member. In case of a vacancy, the new appointee shall serve the remainder of the unexpired term.

(e) Each ex officio member's term is indefinite.

(f) With the consent of a majority of the members, the chair shall set requirements for proxy representation, voting, and the establishment of a quorum.

(g) The membership of the SEMCC shall be inclusive

#### **Section 22-18-41**

**Advanced life support techniques; procurement, carriage, and use of drugs and fluids; performance of services.**

(a) The board may by rule designate certain procedures as advanced life support techniques, which may be performed by EMSP during emergencies, such as situations where the life, health, or safety of a prehospital patient is in immediate jeopardy. The board may prescribe by rule the qualifications and certification necessary for personnel performing advanced life support techniques, and the specific conditions under which the techniques may be performed by EMSP. Notwithstanding any statutory provision to the contrary, EMSP who possess the necessary qualifications and certification prescribed by the board shall not be deemed to have engaged in the unlawful practice of medicine when performing advanced life support techniques in accordance with the constraints established by the board.

(b) Fluids and drugs may be carried only by a properly licensed provider service. A licensed provider service may purchase necessary drugs and fluids from any reliable source, including wholesalers, distributors, and hospitals. Provider services shall purchase, maintain, and administer fluids and drugs in accordance with regulations promulgated by the board.

(c) EMSP may perform services only pursuant to the protocols approved by the board. EMSP may accept orders to perform advanced life support techniques only from medical direction physicians who have completed medical direction training prescribed by the board and hold a current medical direction number.

*(Acts 1995, No. 95-276, p. 488, §4; Act 2006-563, p. 1305, §1; Act 2010-584, p. 1304, §2.)*

**Section 22-18-42**

**Regulation of certain types of care and personnel; purchase of drugs and fluids.**

This chapter shall govern and it shall authorize the Board of Health to regulate only emergency medical care provided outside of hospitals, EMSP who provide care outside of hospitals, provider services ground ambulances, air ambulances, ALS nontransport services, the training of EMSP who provide care outside of hospitals, and orders given for emergency medical care to be provided outside of hospitals. Notwithstanding any provision of law to the contrary, authorized drugs and fluids for emergency medical care and services may be purchased from any reliable source, including wholesalers, distributors, and hospitals. To the extent medical care and nursing care provided within hospitals is governed by other provisions of law, those provisions of law shall not be construed to have been repealed, amended, abridged, or otherwise altered by this chapter.

*(Acts 1995, No. 95-276, p. 488, §5; Act 2006-563, p. 1305, §1; Act 2010-584, p. 1304, §2.)*

**Section 22-18-44**

**Applicability of chapter and rules of board to volunteer fire departments.**

Neither the provisions of this chapter nor rules of the board adopted thereunder shall apply to volunteer fire departments which are not regularly engaged in the provision of emergency medical care and which offer only Basic Life Support response and do not transport. Volunteer fire departments which regularly provide emergency medical care shall be subject to this chapter, except when entitled to an exemption pursuant to Section 22-18-2. Provided, however, that this chapter and regulations adopted thereunder shall govern only the EMS functions of volunteer fire departments and shall not apply to their firefighting functions or other functions. A volunteer fire department shall have in place a system for the emergency treatment or transport of motor vehicle crash victims, or other trauma victims or emergency patients to be deemed to be regularly engaged in the provision of emergency medical care. A volunteer fire department which merely offers cardiopulmonary resuscitation and other first aid and rescue in the course of firefighting and related operations shall not be deemed for that reason alone to be regularly engaged in the provision of emergency medical care.

*(Acts 1995, No. 95-276, p. 488, §7.)*

#### **Section 23-1-10**

#### **"Blue reflective markers" and "fire/water hydrant" defined; purpose and installation of blue reflective markers.**

(a) For purposes of this section, the following words and phrases shall have the respective meanings ascribed to them, except where the context clearly indicates otherwise:

(1) **BLUE REFLECTIVE MARKERS.** Nonlighted, but reflective devices which are blue in color of the reflected light and conform to the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways and/or other standards issued or endorsed by the Director of Transportation and the federal highway administrator.

(2) **FIRE/WATER HYDRANT.** All standpipe hydrants installed on public and private water delivery systems which are installed along public roads within the state, and which are of a size and style to allow adequate water supply to fill fire suppression vehicles of municipal and/or certified volunteer fire departments or furnish a supply of water to trucks at a fire scene.

(b) Blue reflective markers shall be used exclusively for the purpose of indicating the location of fire/water hydrants which are located on public roadways within the state, or on private property with the owner's permission. Markers which are installed so as to be adhered to paved road surfaces or which are placed anywhere within the highway right-of-way shall be placed in conformance with the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways and/or other standards issued or endorsed by the Director of Transportation and the federal highway administrator.

(c) Blue reflective markers may be installed by any municipality, county, fire district, fire or water authority, or any certified volunteer fire department within their primary coverage areas and shall be recognized by all fire departments and firefighters for the purpose stated.

*(Acts 1983, 3rd Ex. Sess., No. 83-806, p. 19.)*

#### **Section 25-5-117**

##### **Limitation period for claims or actions for compensation.**

(a) In case of the contraction of an occupational disease, as defined in this article, or of injury or disability resulting therefrom, a claim for compensation, as defined in Section 25-5-1, shall be forever barred, unless within two years after the date of the injury, as hereinafter defined, the parties shall have agreed upon the compensation payable under this article, or unless within two years after the date of the injury, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In case of death, the claim shall be forever barred, unless within two years after death, if death results proximately from the occupational disease, as defined in this article, and death occurs within three years of the date of the injury, as hereinafter defined, the parties have agreed upon the compensation under this article, or unless within two years after death, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. Notwithstanding the foregoing, if upon the date of death the employee's claim is barred, any claim by his or her dependents likewise shall be barred. If, however, payments of compensation have been made, the limitations as to compensation shall not take effect until the expiration of two years from the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured employee or his or her dependent, to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any case shall be extended to become effective two years from the date when the incapacity ceases. No agreement, express or implied, to shorten or to extend the limitations shall be valid or binding on either of the parties if the employment, at the time of the exposure, is or was subject to this article.

(b) For the purposes of occupational diseases other than pneumoconiosis or radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease.

(c) For purposes of pneumoconiosis and radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease in each of at least 12 months, within a period of five years prior to the date of the injury.

*(Acts 1971, No. 668, p. 1379; Acts 1992, No. 92-537, p. 1082, §34.)*

#### **Section 25-9-254**

##### **Fire prevention in surface structures.**

(a) Oil, grease, and similar flammable materials shall be stored in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or the room in which it is stored shall be of fire-resistive material and well-ventilated. Tight metal receptacles shall be provided for oily waste.



(b) Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.

(c) Unless existing structures located within 100 feet of any mine opening are of reasonably fireproof construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation.

*(Acts 1949, No. 207, p. 242, §64.)*

#### **Section 27-1-23**

##### **Motor vehicle accidents by certain public safety officers.**

(a) A personal auto insurance carrier of a full-time law enforcement officer or firefighter of a municipality or a county or the State of Alabama or a member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service shall not consider any motor vehicle accident of the full-time law enforcement officer or firefighter or member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service in fixing insurance premiums or cause any increase in the employee's personal automobile insurance premiums if, at the time of the accident, any of the following conditions exist:

(1) The full-time law enforcement officer or firefighter or member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service was acting as an agent of the governmental employer or of the volunteer fire department, volunteer rescue squad, or volunteer emergency medical service and the automobile accident occurred in the performance of their duties.

(2) The full-time law enforcement officer or firefighter or member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service was operating a motor vehicle owned by the governmental employer or by the volunteer fire department, volunteer rescue squad, or volunteer emergency medical service and the automobile accident occurred in the performance of their duties.

(3) The full-time law enforcement officer or firefighter or member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service was not negligent or operating the government or department vehicle in a negligent manner at the time of the accident.

(b) The full-time law enforcement officer or firefighter or member of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service shall be exempt from filing the SR-13 form with the Department of Public Safety if any of the conditions in subsection (a) existed at the time of the motor vehicle accident.

*(Act 2000-729, p. 1568, §§1, 2; Act 2006-425, p. 1052, §1.)*

#### **Section 27-2-10**

**Appointment, etc., of State Fire Marshal, assistants, etc.; compensation and bond thereof; contracting for professional services.**

(a) Subject to the Merit System Act and rules and regulations issued pursuant thereto, the commissioner shall prescribe the qualifications and duties of and appoint, employ, bond and remove a State Fire Marshal and such other assistants, deputies, actuaries, examiners and other employees as he deems necessary for the efficient performance of his duties under this code.

(b) The commissioner shall fix the compensation of all such personnel in accordance with the Merit System Act and the pay plan of the state Personnel Department.

(c) The commissioner may contract for and procure on a basis of fee, and without giving such persons any status in the classified service of the state, such independently contracting actuarial, technical and other similar professional services as he may from time to time require for the discharge of his duties.

(d) Before entering upon the duties of their respective offices, the chief deputy fire marshal, the deputy fire marshal and the chief clerk shall execute to the State of Alabama a bond, to be approved by the Governor, in amounts to be fixed by the Insurance Commissioner, for the faithful performance of their duties.

*(Acts 1943, No. 122, p. 123; Acts 1951, No. 234, p. 504, §10; Acts 1961, Ex. Sess., No. 208, p. 2190; Acts 1971, No. 407, p. 707, §22.)*

**Section 27-5-6**

**"Casualty insurance" defined.**

(a) "Casualty insurance" includes:

(1) **VEHICLE INSURANCE.** Insurance against loss of, or damage to, any land vehicle or aircraft, or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from, or incidental to, ownership, maintenance or use of any such vehicle, aircraft or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal;

(2) **LIABILITY INSURANCE.** Insurance against legal liability for the death, injury or disability of any human being or for damage to property, and provision of medical, hospital, surgical and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with, or supplemental to, liability insurance;

(3) **WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY.** Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement, or injury of employees;

(4) **BURGLARY AND THEFT.** Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also, insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents resulting from any cause;

(5) **PERSONAL PROPERTY FLOATER.** Insurance upon personal effects against loss or damage from any cause under a personal property floater;

(6) **GLASS.** Insurance against loss or damage to glass, including its lettering, ornamentation and fittings;

(7) **BOILER AND MACHINERY.** Insurance against any liability and loss, or damage to, property or interest resulting from accidents to, or explosions of, boilers, pipes, pressure containers, machinery or apparatus and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(8) **LEAKAGE AND FIRE EXTINGUISHING EQUIPMENT.** Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire-extinguishing equipment or apparatus, water pipes or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps and other fire-extinguishing equipment or apparatus;

(9) **CREDIT.** Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(10) **MALPRACTICE.** Insurance against legal liability of the insured and against loss, damage or expense incidental to a claim of such liability and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service;

(11) **LIVESTOCK.** Insurance against loss or damage to livestock and services of a veterinarian for such animals;

(12) **ELEVATORS.** Insurance against loss of, or damage to, any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspections of and issue certificates of inspection upon elevators;

(13) **ENTERTAINMENTS.** Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals; and

(14) MISCELLANEOUS. Insurance against any other kind of loss, damage, or liability properly, a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(b) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (a) (1), (a) (2), (a) (4), and (a) (10) of this section shall, for all purposes, be deemed to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this title applicable to life or disability insurances.

*(Acts 1971, No. 407, p. 707, §91.)*

### **Section 31-9-3**

#### **Definitions.**

As used in this article, these terms shall have the following meanings:

(1) EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, earthquake, or other natural cause. These functions include, without limitation, fire-fighting services; police services; medical and health services; rescue, engineering, air raid warning services; communications; radiological, chemical, and other special weapons of defense; evacuation of persons from stricken areas; emergency welfare services (civilian war aid); emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2) LOCAL ORGANIZATION. The organization of local emergency management forces designed principally for operation within their own community but capable of moving to other areas.

(3) POLITICAL SUBDIVISION. Any county or municipality created pursuant to law.

(4) STATE PUBLIC HEALTH EMERGENCY. An occurrence or imminent threat of an illness or health condition that does all of the following:

a. Is believed to be caused by any of the following:

1. Bioterrorism.
2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.
3. A natural disaster.
4. A chemical attack or accidental release.

5. A nuclear or radiological attack or accident.

b. Poses a high probability of any of the following harms:

1. A large number of deaths in the affected population.

2. A large number of serious or long-term disabilities in the affected population.

3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(5) STATE OF EMERGENCY. When the Governor duly proclaims the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by fire, flood, storm, epidemic, technological failure or accident, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, earthquake, explosion, terrorism, or man-made disaster, or other conditions, other than conditions resulting from a labor controversy or conditions causing a state of war emergency, which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or energy shortage requires extraordinary measures beyond the authority vested in the Alabama Public Service Commission.

(6) STATE TECHNOLOGICAL EMERGENCY. An emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

*(Acts 1955, No. 47, p. 267, §3; Act 2006-522, p. 1210, §1.)*

#### **Section 31-9-10**

#### **Local emergency management organizations; emergency powers of political subdivisions.**

(a) Each political subdivision of this state is hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program and may confer or authorize the conferring, upon members of the auxiliary police, the powers of peace officers, subject to such restrictions as shall be imposed. The governing body of the political subdivision is authorized to appoint a director, who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this article.

(b) The governing body of each political subdivision shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain, and distribute equipment, materials, and supplies for emergency management purposes; to provide for the health and safety of persons and

property, including emergency assistance to the victims of any disaster; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers; provided, that compensated employees shall be subject to any existing civil service or Merit System laws.

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency.

(4) To assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related service, police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision.

(5) In the event that the governing body of the political subdivision determines that any of the conditions described in Section 31-9-2(a) has occurred or is imminently likely to occur, the governing body shall have the power:

a. To waive procedure and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

b. To impose a public safety curfew for its inhabitants. If a public safety curfew is imposed as authorized herein, it shall be enforced by the appropriate law enforcement agency within the political subdivision. A public safety curfew imposed under this subsection shall not apply to employees of utilities, cable, and telecommunications companies and their contractors engaged in activities necessary to maintain or restore utility, cable, and telecommunications services or to official emergency management personnel engaged in emergency management activities.

(6) To close, notwithstanding Section 11-1-8, any and all public buildings owned or leased by and under the control of the political subdivision where emergency conditions warrant, whether or not a local state of emergency has been declared by the governing body of the political subdivision. In the event that any documents required to be filed by a time certain deadline cannot be filed in a timely manner due to the closing of an office under this subdivision, the deadline for filing shall be extended to the date that the office is reopened as provided in Section 1-1-4.

(c) No local governing body of a political subdivision shall have the authority to provide for and compel evacuation of the area except by the direction and under the supervision of the Governor or the State Emergency Management Agency, or both. Any action taken by the governing body of the political subdivision shall remain in full force and effect unless revoked by proclamation of the Governor, issued as provided in Section 31-9-8.

(d)(1) Nothing in this section shall authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition except as provided in subdivision (2).

(2) A law enforcement officer who is acting in the lawful discharge of the officer's official duties may disarm an individual if the officer reasonably believes that it is immediately necessary for the protection of the officer or another individual. The officer shall return the firearm to the individual before discharging that individual unless the officer arrests that individual for engaging in criminal activity or seizes the firearm as evidence pursuant to an investigation for the commission of a crime or, at the discretion of the officer, the individual poses a threat to himself or herself or to others.

*(Acts 1955, No. 47, p. 267, §10; Act 2006-522, p. 1210, §1; Act 2009-572, p. 1679, §1.)*

#### **Section 31-9-11**

##### **Powers, duties, etc., of employees of political subdivisions rendering outside aid.**

Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in Section 31-9-10, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

*(Acts 1955, No. 47, p. 267, §11.)*

#### **Section 32-5-11**

##### **Throwing or shooting deadly or dangerous missile into occupied vehicle.**

Whoever willfully throws or shoots a rock, stone, brick or piece of iron, steel or other like metal, or any deadly or dangerous missile or fire bomb, into a motor vehicle that is occupied by one or more persons is guilty of a felony and upon conviction shall be imprisoned for not less than one year and a day and shall be fined not less than \$500.00.

This section is cumulative.

*(Acts 1967, No. 429, p. 1099.)*

#### **Section 32-5-213**

##### **Horns and warning devices.**



(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting a sound audible under normal conditions for a distance of not less than 200 feet.

It shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device.

(b) Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a siren, bell, ululating multi-toned horns or other electronic siren type device approved by the Director of Public Safety.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

*(Acts 1927, No. 347, p. 348; Code 1940, T. 36, §36; Acts 1966, Ex. Sess., No. 432, p. 578.)*

#### **Section 32-5-241**

#### **Additional permissible lights on vehicles.**

(a) Spot lamps and auxiliary lamps.

(1) SPOT LAMPS. Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle.

(2) FOG LAMPS. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

(3) AUXILIARY PASSING LAMPS. Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands and every such auxiliary passing lamp shall meet the requirements and limitations set forth in this chapter.

(4) AUXILIARY DRIVING LAMPS. Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands and every auxiliary driving lamp shall meet the requirements and limitations set forth in this chapter.

(b) Signal lamps and signal devices.

(1) Any motor vehicle may be equipped and when required under this division shall be equipped with the following signal lamps or devices:

a. A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.

b. A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or the left and which shall be visible both from the front and rear.

(2) A stop lamp shall be plainly visible and understandable from a distance of 100 feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 100 feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(3) All mechanical signal devices shall be self-illuminated when in use at the time mentioned in subsection (a) of Section 32-5-240.

(c) Additional lighting equipment.

(1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

(d) Special restriction on lamps.

(1) Any lighted lamp or illuminated device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to authorized emergency vehicles.

(3) Any vehicle may be equipped with flashing lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this section. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber.

The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 1,500 feet under normal atmospheric conditions at night.

(4) Flashing lights may be used on motor vehicles as a means of indicating a right or left turn; a stop lamp may pulsate with different intensities provided that it meets at all intensities the provisions of subdivision (2) of subsection (b) of this section; and the warning lights on emergency vehicles may flash.

*(Acts 1927, No. 347, p. 348; Code 1940, T. 36, §41; Acts 1949, No. 517, p. 754, §11; Acts 1961, Ex. Sess., No. 136, p. 2062, §3; Acts 1965, No. 815, p. 1522.)*

#### **Section 32-5A-7**

##### **Authorized emergency vehicles.**

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of Section 32-5-213 and visual requirements of any laws of this state requiring visual signals on emergency vehicles.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

*(Acts 1980, No. 80-434, p. 604, §1-106.)*

#### **Section 32-5A-58**

### **Following emergency vehicle prohibited.**

The driver of any vehicle other than one on official business shall not follow any authorized emergency vehicle traveling in response to an emergency call closer than 500 feet or stop such vehicle within 500 feet of any authorized emergency vehicle stopped in answer to an emergency call.

*(Acts 1980, No. 80-434, p. 604, §11-109.)*

### **Section 32-5A-58.1**

#### **Yielding right-of-way to stationary authorized emergency vehicle.**

Repealed by Act 2009-577, p. 1695, §4, effective August 1, 2009.

*(Act 2006-546, p. 1263, §1.)*

### **Section 32-5A-58.2**

#### **Moving over or reducing speed when approaching law enforcement vehicles or emergency vehicles, etc.**

(a) This section shall be known as the "Alabama Move Over Act."

(b)(1) When an authorized law enforcement vehicle or emergency vehicle making use of any visual signals is parked, when a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, when a utility service vehicle operated by or on behalf of an entity providing utility services displaying any rotating lights, flashing lights, or other visual signals is parked on the roadside while performing tasks associated with the provision of utility services, or when a garbage, trash, refuse, or recycling collection vehicle is actively collecting garbage, trash, refuse, or recycling materials on the roadside, the driver of every other vehicle, as soon as it is safe, shall do the following:

a. When driving on an interstate highway or other highway with two or more lanes traveling in the direction of the law enforcement vehicle, emergency vehicle, wrecker, utility service vehicle, or garbage, trash, refuse, or recycling collection vehicle, the driver shall vacate the lane closest to the law enforcement vehicle, emergency vehicle, wrecker, utility service vehicle, or garbage, trash, refuse, or recycling collection vehicle, unless otherwise directed by a law enforcement officer. If not safe to move over, the driver shall slow to a speed that is at least 15 miles per hour less than the posted speed limit unless otherwise directed by a law enforcement officer.

b. When driving on a two-lane road, the driver shall move as far away from the law enforcement vehicle, emergency vehicle, wrecker, utility service vehicle, or garbage, trash, refuse, or recycling collection vehicle as possible within his or her lane and slow to a speed that is 15 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater or travel at 10

miles per hour when the posted speed limit is 20 miles per hour or less, unless otherwise directed by a law enforcement officer.

(2) A violation of this subsection is a misdemeanor punishable by a fine of twenty-five dollars (\$25). Upon a second violation of this subsection, the fine shall be fifty dollars (\$50). Upon a third or subsequent violation, the fine shall be one hundred dollars (\$100).

(c)(1) The Department of Public Safety shall provide an educational awareness campaign informing the motoring public about this section. The department shall provide information about this section in all newly printed driver's license educational materials after January 1, 2010.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

*(Act 2009-577, p. 1695, §§1-3; Act 2012-409, p. 1114, §1; Act 2013-400, §1.)*

#### **Section 32-5A-59**

##### **Crossing fire hose.**

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private road, or driveway to be used at any fire or alarm of fire, without the consent of the fire department official or police officer in command.

*(Acts 1980, No. 80-434, p. 604, §11-110.)*

#### **Section 32-5A-115**

##### **Operation of vehicles on approach of authorized emergency vehicles; signals on emergency vehicles; duty of emergency vehicle driver.**

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp and audible signal as is required by law, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with regard for the safety of all persons using the highways.

(c) Authorized emergency vehicles shall be equipped with at least one lighted lamp exhibiting a colored light as hereinafter provided visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle and a siren, exhaust whistle, or bell capable of giving an audible signal. The color of the lighted lamp exhibited by police vehicles may be red or blue and the color of the lighted

lamp exhibited by the fire department and other authorized emergency vehicles, including ambulances, shall be red. No vehicle other than a police vehicle will use a blue light. An amber or yellow light may be installed on any vehicle or class of vehicles designated by the Director of Public Safety, but such light shall serve as a warning or caution light only, and shall not cause other vehicles to yield the right-of-way. This provision shall not operate to relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor shall it protect the driver of any such vehicle from the consequences of an arbitrary exercise of such right-of-way.

*(Acts 1980, No. 80-434, p. 604, §4-106; Acts 1981, No. 81-803, p. 1412, §1.)*

#### **Section 32-5A-137**

#### **Stopping, standing, or parking prohibited in specified places.**

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand, or park a vehicle:

- a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- b. On a sidewalk;
- c. Within an intersection;
- d. On a crosswalk;
- e. Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
- f. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
- g. Upon any bridge or other elevated structure, upon a highway, or within a highway tunnel;
- h. On any railroad tracks;
- i. At any place where official signs prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

- a. In front of a public or private driveway;
- b. Within 15 feet of a fire hydrant;

- c. Within 20 feet of a crosswalk at an intersection;
- d. Within 30 feet upon the approach to any flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;
- e. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance (when properly signposted);
- f. At any place where official signs prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

- a. Within 50 feet of the nearest rail or a railroad crossing;
- b. At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful.

*(Acts 1980, No. 80-434, p. 604, §10-103.)*

#### **Section 32-5A-219**

##### **Pedestrians to yield to authorized emergency vehicles.**

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Section 32-5-213 and visual signals meeting the requirements of law, or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right-of-way to the authorized emergency vehicle.

(b) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

*(Acts 1980, No. 80-434, p. 604, §5-110.)*

#### **Section 32-6-170**

##### **"Volunteer rescue squad" defined.**

As used in this division, unless the context clearly requires a different meaning, "volunteer rescue squad" means only those persons or organizations who are members of the Alabama Association of Rescue Squads, Inc.



*(Acts 1977, No. 777, p. 1336, §1.)*

#### **Section 32-6-171**

##### **Authorized; distinctive lettering.**

Members of volunteer rescue squads may, upon application and subject to the provisions of this division, be issued distinctive motor vehicle license plates or tags identifying these persons with such organizations. The distinctive plates or tags so issued members of these organizations shall bear the letters "R.S." and the proper number stamped thereon.

*(Acts 1977, No. 777, p. 1336, §2.)*

#### **Section 32-6-270**

##### **"Firefighter" and "retired volunteer firefighter" defined.**

(a) As used in this division, unless the context clearly requires a different meaning: "Firefighter" means a current member or members of, or a retired member or members from, a paid, part-paid or volunteer fire department of a city, town, county, or other subdivision of the state or civilian federal firefighters or of a public corporation organized for the purpose of providing water, water systems, fire protection services, or fire protection facilities in the state; and such words shall include the chief, assistant chief, wardens, engineers, captains, firemen, and all other officers and employees of such departments who actually engage in fire fighting or in rendering first aid in case of drownings or asphyxiation at the scene of action.

(b) As used in this division, the term "retired volunteer firefighter" means someone that has retired from performing the required duties of a firefighter on a voluntary basis at a certified volunteer fire department, wherein, those duties were performed for at least 10 years and the person has attained the age of 55 years old. Notwithstanding any other provision of this division, the term "retired volunteer firefighter" includes a volunteer firefighter who is a resident of this state and who has retired from a volunteer fire department in another state and who otherwise meets the requirements of this subsection.

*(Acts 1982, No. 82-550, p. 909, §1; Acts 1989, No. 89-917, p. 1815, §1; Acts 1991, No. 91-579, p. 1066, §1; Act 2013-398, §1.)*

#### **Section 32-6-271**

##### **Distinctive plate or tag authorized; form.**

A firefighter may, upon application and subject to the provisions of this division be issued a distinctive motor vehicle license plate or tag as identification as a firefighter. In addition to the proper numbers,

words, and insignias used on the standard license plate or tag issued for motor vehicles, the distinctive plates or tags so issued firefighters shall bear a red Maltese cross emblem on each side to the left and right of the regular tag numbers. The words "Fire Fighter" should be centered at the bottom of the tag.

*(Acts 1982, No. 82-550, p. 909, §2.)*

#### **Section 32-6-272**

#### **Issuance of distinctive plates; lists of members; fees; violations.**

(a) The distinctive license plates here provided for shall be prepared by the Commissioner of Revenue and shall be issued through the judge of probate, license commissioner, or other license issuing official of the several counties of the state in like manner as are other motor vehicle license plates or tags and such officers shall be entitled to their regular fees for such service.

(b) The Alabama Forestry Commission shall prepare a list of all members of certified volunteer fire departments and the Firefighters' Personnel Standards and Education Commission shall prepare a list of all members of paid or part-paid fire departments. The Alabama Forestry Commission shall also add to the list any retired volunteer firefighter retired from a volunteer fire department in another state who submits proof to the commission of eligibility pursuant to this division. The Forestry Commission and the Firefighters' Personnel Standards and Education Commission shall submit to the judge of probate, license commissioner, or other license issuing official of each county by December 1 of each year the lists of members of fire departments.

(c) An applicant for a distinctive plate shall present to the issuing official proof of his or her identification, and the firefighter shall be issued the requested number of distinctive license plates or tags upon the payment of the regular license fee for tags, as provided by law, but shall not be required to pay the three dollar (\$3) fee. The distinctive license plates or tags so issued shall be used only upon and for personally-owned, private, passenger vehicles, to include station wagons and pick-up trucks, registered in the name of the firefighter making application therefor, and when so issued to the applicant shall be used upon the vehicle for which issued in lieu of the standard license plates or license tags normally issued for such vehicle.

(d) Any person who joins a volunteer, paid, or part-paid fire department after December 1 of any year or any person who is mistakenly omitted from the lists prepared as described above may obtain a distinctive plate by presenting to the license issuing official proof of his or her membership in a fire department by means of a certificate signed by the chief of the department on a form prescribed by the Alabama Forestry Commission.

(e) Anyone who is proven to have either falsely obtained or certified an individual to obtain a distinctive firefighter license plate shall be guilty of a Class C misdemeanor, and upon conviction, shall be punished according to law.

(f) A distinctive license plate shall be provided, upon written request, to a widow or widower of either of a paid, part-paid, or a volunteer firefighter who dies in the line of duty. For purposes of this subsection, a

death in the line of duty is determined by a circumstance in which a municipal firefighter's death would result in a death benefit under Section 11-43-144.

*(Acts 1982, No. 82-550, p. 909, §3; Acts 1986, No. 86-456, p. 833; Acts 1989, No. 89-944, p. 1857, §1; Acts 1991, No. 91-579, p. 1066, §2; Act 2006-422, p. 1048, §1; Act 2010-582, p. 1301, §1; Act 2013-398, §1.)*

#### **Section 32-6-273**

#### **Nontransferability of plates as between motor vehicle owners; transfer of plates to newly acquired vehicle.**

The distinctive license plates issued hereunder shall not be transferable as between motor vehicle owners and in the event the owner of a vehicle bearing such distinctive plates shall sell, trade, exchange or otherwise dispose of same such plates shall be retained by the owner to whom issued and by him or her returned to the judge of probate or license commissioner of the county who shall receive and account for same in the manner stated below. In the event such owner shall acquire by purchase, trade, exchange or otherwise a vehicle for which no standard plates have been issued during the current license period, the judge of probate or license commissioner of the county shall, upon being furnished by the owner thereof proper certification of the acquisition of such vehicle and the payment of the motor vehicle license tax due upon such vehicle, authorize the transfer to the vehicle of the distinctive license plates previously purchased by such owner, which plates shall authorize the operation of the vehicle for the remainder of the then current license period. In the further event the owner of such distinctive plates shall acquire by purchase, trade, exchange, or otherwise a vehicle for which standard plates have been issued during the current license year the judge of probate or license commissioner shall, upon proper certification of such owner and upon delivery to such official of the standard plates previously issued for such vehicle, authorize the owner of such newly-acquired vehicle to place the distinctive plates previously purchased by him or her upon such vehicle and use same thereon for the remainder of the then current license period. Such notice of transfer of ownership shall be made of record by the judge of probate or the license commissioner.

Provided further, that any person acquiring by purchase, trade, exchange, or otherwise any vehicle formerly bearing such distinctive plates shall be authorized, upon certification of such fact to the judge of probate or license commissioner of the county and the payment of the fee now required by law, to purchase standard replacement plates for such vehicle which shall authorize the operation of such vehicle by the new owner for the remainder of the license period.

*(Acts 1982, No. 82-550, p. 909, §4.)*

#### **Section 32-6-274**

#### **Plates to be furnished for licensing year commencing January 1, 1984 and thereafter.**

Such distinctive plates or tags shall be prepared and furnished for the licensing year commencing January 1, 1984, and thereafter as is provided by law for the issuance of other license plates.

*(Acts 1982, No. 82-550, p. 909, §5.)*

### **Section 32-10-13**

#### **Accident response service.**

(a) As used in this section, the following terms shall have the following meanings:

(1) ACCIDENT RESPONSE SERVICE FEE. A fee imposed for the response or investigation by a law enforcement officer or agency of a motor vehicle accident.

(2) ENTITY. A governmental entity or agency or department of a governmental entity.

(3) LAW ENFORCEMENT AGENCY. The Alabama Department of Public Safety, the police department of each incorporated city or municipality, the department of each sheriff of the state, including all deputy sheriffs, the enforcement division of the Department of Conservation and Natural Resources, the Public Service Commission, and each public agency in the state charged with the enforcement of any laws and the officers and employees of which have the power as such to make arrests. The term does not include rescue squads or volunteer fire departments.

(4) LAW ENFORCEMENT OFFICER. An officer of a law enforcement agency.

(b) Notwithstanding any other provision of law to the contrary, no law enforcement agency, law enforcement officer, or other entity shall impose an accident response service fee on an insurance company, the driver or owner of a motor vehicle, or any other person or entity.

*(Act 2010-698, p. 1691, §§1, 2.)*

### **Section 32-11-1**

#### **Rescue squad defined.**

Wherever the term rescue squad appears in this chapter, it shall refer to and include only those persons or organizations who are members of the Alabama Association of Rescue Squads.

*(Acts 1965, 2nd Ex. Sess., No. 74, p. 98, §4.)*

### **Section 32-11-2**

#### **Exemption from license and registration fees and ad valorem taxes.**

Motor vehicles owned by volunteer rescue squads incorporated under the laws of Alabama and used exclusively as life saving, rescue, or first aid vehicles without profit, and which are not rented, leased, or loaned to any private individual, firm, or corporation shall be exempt from payment of license and registration fees and all ad valorem taxes otherwise prescribed by law.

*(Acts 1965, 2nd Ex. Sess., No. 74, p. 98, §1; Acts 1966, Ex. Sess., No. 422, p. 567.)*

### **Section 32-11-3**

#### **Color and lettering of vehicles.**

Any vehicle, to come under the provisions of this chapter, shall be painted a distinguishing color and shall display conspicuous letters and figures not less than three inches in height showing the identity of the volunteer rescue squad that owns the vehicle.

*(Acts 1965, 2nd Ex. Sess., No. 74, p. 98, §2.)*

### **Section 32-11-4**

#### **Special tags.**

The treasurer of any rescue squad coming under the provisions of this chapter may apply to the Department of Revenue, giving the make, type, model, motor number, and serial number of the vehicle or vehicles, together with such other information as the Department of Revenue shall require, which information shall be furnished under oath by such officer; and, if upon examination the same appears regular to the Department of Revenue, it shall issue to such treasurer the necessary number of tags to be placed on such vehicle, and such tags shall be used on no other vehicle than that for which issued. Such tags shall have the letters R. S. and proper number stamped thereon. All replacement tags issued for such vehicles shall be similarly stamped or marked. For issuance of such tags and to cover the expense of preparing the same, the treasurer shall pay to the Department of Revenue the sum of \$1.00 for the necessary tags for each vehicle to which this chapter applies.

*(Acts 1965, 2nd Ex. Sess., No. 74, p. 98, §3.)*

### **Section 34-33-1**

#### **Definitions.**

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed in this section:

(1) FIRE PROTECTION SPRINKLER CONTRACTOR. An individual, partnership, corporation, association, or joint venture engaged in the business of installation, repair, alteration, addition, maintenance, or inspection of fire protection sprinkler systems. This does not include local building officials, fire inspectors, or insurance inspectors when acting in their official capacity.

(2) CERTIFIED FIRE PROTECTION SPRINKLER CONTRACTOR. A fire protection sprinkler contractor who has qualified and received a permit from the State Fire Marshal.

(3) CERTIFICATE HOLDER. An individual who is listed on the State Fire Marshal's permit as the responsible managing owner, partner, officer, or employee who is actively in charge of the work of the certified fire protection sprinkler contractor.

(4) STATE FIRE MARSHAL'S PERMIT. The form issued by the State Fire Marshal to a fire protection sprinkler contractor upon application being approved and fee paid. The permit shall be issued in the name of the fire protection sprinkler contractor, with the name of the certificate holder noted thereon.

(5) FIRE PROTECTION SPRINKLER SYSTEM. A system of overhead piping designed in accordance with fire protection engineering standards. The system is supplied from a reliable, constant, and sufficient water supply, such as a gravity tank, fire pump, reservoir, or pressure tank, and/or connection by underground piping to a city main. The portion of the sprinkler system above ground is considered the fire protection sprinkler system for purposes of this chapter, and is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern. The system includes a controlling valve and device for actuating an alarm when the system is in operation. The system is usually activated by heat from a fire and discharges water over the fire area. Fire protection sprinkler systems shall include the following types: Wet-pipe systems, dry-pipe systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, antifreeze systems, and circulating closed loop systems, all as defined in National Fire Protection Association Pamphlet 13, Standard for the Installation of Sprinkler Systems, latest edition, or National Fire Protection Association Pamphlet 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Mobile Homes, latest edition.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §1; Acts 1984, No. 84-250, p. 399, §1; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

#### **Section 34-33-2**

#### **Administration of chapter vested in State Fire Marshal.**

The administration of this chapter is vested in the State Fire Marshal who shall have the power to set or make changes in the amount of the fee charged as necessary for the administration and enforcement of this chapter.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §2; Acts 1984, No. 84-250, p. 399, §1; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

### **Section 34-33-3**

#### **Installation, repair, etc., of fire protection sprinkler systems - Conformity with chapter required.**

It shall be unlawful for any individual, partnership, corporation, association, or joint venture to engage in the business of installation, repair, alteration, addition, maintenance, or inspection of a fire protection sprinkler system in this state except in conformity with the provisions of this chapter. Nothing in this chapter, however, shall be construed to apply to fire protection sprinkler system owners who employ registered professional fire protection engineers, and skilled workers who regularly and routinely design, install, repair, alter, add to, maintain, and inspect sprinkler systems on and within the premises of their employer, provided such systems are for the owners' use only.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §3; Acts 1984, No. 84-250, p. 399, §1; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

### **Section 34-33-4**

#### **Installation, repair, etc., of fire protection sprinkler systems - Application for State Fire Marshal's permit; contents; status of applicant; application fee; competency test; reciprocity.**

Any individual, partnership, corporation, association, or joint venture desiring to engage in the business of fire protection sprinkler contractor shall submit to the State Fire Marshal on standard forms provided by the State Fire Marshal a completed application. The applicant shall include a fee of \$100 when making the application. The applicant shall designate in the application the name of the proposed certificate holder and provide written proof that such individual has passed a competency test administered by the National Institute for Certification in Engineering Technology (NICET) as a Fire Protection Layout Technician - Level III. A copy of the NICET letter of notification that the proposed certificate holder has passed the competency test shall be sufficient written proof. The State Fire Marshal shall issue, upon receipt of the application and fee, a State Fire Marshal's permit to a fire protection sprinkler contractor who has a current State Fire Marshal's permit, or who produces evidence of having a current state permit from another state, if such state shall have entered into an agreement of reciprocity with the State of Alabama.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §4; Acts 1984, No. 84-250, p. 399, §1; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

### **Section 34-33-5**

#### **Issuance of State Fire Marshal's permit.**

If the required fee has been paid, satisfactory written proof from NICET has been provided that the competency test was passed when required by this chapter, and the proposed certificate holder found to be at present a responsible, managing owner, partner, officer, or employee of the fire protection sprinkler contractor, the State Fire Marshal shall within 30 days issue a State Fire Marshal's permit in the name of the fire protection sprinkler contractor with the name of the certificate holder noted thereon.



*(Acts 1982, 2nd Ex. Sess., No 82-774, p. 271, §5; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

#### **Section 34-33-6**

##### **Restrictions and limitations upon permit holder.**

In no case shall a certificate holder be allowed to obtain a State Fire Marshal's permit for more than one fire protection sprinkler contractor at a time. If the certificate holder should leave the employment of the fire protection sprinkler contractor, he or she must notify the State Fire Marshal within 30 days. The certificate holder shall not be eligible to obtain a State Fire Marshal's permit for more than one other fire protection sprinkler contractor for a period of 12 months thereafter. If the certificate holder should leave the employment of the fire protection sprinkler contractor, or die, the contractor shall have nine months to submit a new application proposing designation of another individual as the certificate holder for the applicant. If such application is not received and a new permit issued within the allotted time, the State Fire Marshal shall revoke the permit of the fire protection sprinkler contractor.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §6; Acts 1984, No. 84-250, p. 399, §1; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

#### **Section 34-33-7**

##### **Expiration of permit; renewal procedure.**

The State Fire Marshal's permit shall expire annually at midnight on September 30. At least 30 days prior, the fire protection sprinkler contractor must submit a renewal application. A renewal fee must be submitted with the application. Failure to renew the permit prior to the expiration shall cause the permit to be null and void as of the expiration date, and it shall be unlawful under this chapter for any individual, partnership, corporation, association, or joint venture to engage in the business of installing, repairing, altering, adding, maintaining, or inspecting a fire protection sprinkler system without a valid State Fire Marshal's permit. The permit may be reinstated by making application as before, and payment of the fee; however, until such time as a new permit is issued, it shall be unlawful for the fire protection sprinkler contractor to engage in installing, repairing, altering, adding, maintaining, or inspecting fire protection sprinkler systems.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §7; Acts 1984, No. 84-250, p. 399, §1.)*

#### **Section 34-33-8**

##### **Presentation of permit to local building official; payment of local license fees.**

If a certified fire protection sprinkler contractor desires to do business in any part of the state, he or she shall be required by this chapter to deliver to the local building official a copy of his or her State Fire

Marshal's permit. The local building official shall require a copy of the State Fire Marshal's permit before issuing a license or building permit. The certified fire protection sprinkler contractor shall be required to pay any fees normally imposed for local licenses or permits, but the local official shall impose no other requirements on the certified fire protection sprinkler contractor to prove competency other than proper evidence of a valid State Fire Marshal's permit.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §8.)*

#### **Section 34-33-9**

##### **Chapter imposes no limitation on power of municipality, etc., to regulate work of contractors.**

Nothing in this chapter limits the power of a municipality, county, or the state to regulate the quality and character of work performed by contractors, through a system of permits, fees, and inspections, which are designed to assure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety. Nothing in this chapter limits the power of a municipality, county, or the state to adopt any system of permits requiring submission to and approval by the municipality, county, or the state, of plans and specifications for work to be performed by contractors before commencement of the work. If plans for a fire protection sprinkler system are required to be submitted to and approved by any municipality, county, or the state (or any departments or agencies thereof), the plans must bear the permit number of the certified fire protection sprinkler contractor or proof that the person, firm, or corporation that designed such fire protection sprinkler system is an exempt owner under Section 34-33-3. The official authorized to issue building or other related permits shall ascertain that the fire protection sprinkler contractor is duly certified by requiring evidence of a valid State Fire Marshal's permit.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §9; Acts 1984, No. 84-250, p. 399, §1.)*

#### **Section 34-33-10**

##### **Application of chapter; compliance with chapter required before contract awarded; copies of chapter furnished to invited bidders.**

(a) This chapter also applies to any fire protection sprinkler contractor performing work for any municipality, county, or the state. Officials of any municipality, county, or the state are required to determine compliance with this chapter before awarding any contracts for the installation, repair, alteration, addition, or inspection of a fire protection sprinkler system. Bids for such shall be accompanied by a copy of a valid State Fire Marshal's permit.

(b) All architects and engineers preparing plans and specifications for work involving fire protection sprinkler systems to be contracted in the State of Alabama shall include in their invitations to bidders and their specifications a copy of this chapter or such portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a

license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §10; Acts 1988, 1st Ex. Sess., No. 88-919, p. 515, §1.)*

#### **Section 34-33-11**

#### **Disposition of funds collected pursuant to chapter; grants and donations allowed.**

All funds collected pursuant to this chapter shall be deposited in the State Treasury to the credit of the State Fire Marshal's Fund authorized by Section 24-5-10. The State Fire Marshal shall be authorized to expend moneys from the State Fire Marshal's Fund for the administration and enforcement of this chapter. The State Fire Marshal shall be allowed to receive grants and donations from associations, firms, or individuals who are interested in the upgrading and quality of fire protection sprinkler systems.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §11.)*

#### **Section 34-33-12**

#### **Penalties.**

Whenever the State Fire Marshal shall have reason to believe that any individual, partnership, corporation, association, or joint venture is or has been violating any provisions of this chapter, he or she or his or her deputy or assistant may issue and deliver to such individual, partnership, corporation, association, or joint venture an order to cease and desist such violation. Failure to comply with any order under this section shall constitute a Class B misdemeanor and shall be subject to punishment within the limits and as provided by state laws. In addition, the State Fire Marshal may impose a civil penalty not to exceed \$250 for each day the violation exists. Violation of any provision of this chapter or failure to comply with a cease and desist order shall be cause for revocation of the State Fire Marshal's permit.

*(Acts 1982, 2nd Ex. Sess., No. 82-774, p. 271, §12.)*

#### **Section 34-33A-1**

#### **Definitions.**

For purposes of this chapter, the following words have the following meanings:

(1) CERTIFICATE HOLDER. An individual who is listed on the State Fire Marshal's permit as the responsible managing owner, partner, officer, or employee who is actively in charge of the work of the certified fire alarm contractor meeting the requirements established in Section 34-33A-5.

(2) **CERTIFIED FIRE ALARM CONTRACTOR.** A fire alarm contractor who has qualified and received a permit from the State Fire Marshal, with an NICET Level III on staff.

(3) **FIRE ALARM CONTRACTOR.** An individual, partnership, corporation, association, or joint venture engaged in the business of installation, repair, alteration, addition, maintenance, or inspection of fire alarm systems. The term does not include local building officials, fire inspectors, or insurance inspectors when acting in their official capacity.

(4) **FIRE ALARM SYSTEM.** A system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals. Any system installed after August 1, 2009, shall follow the installation standard set forth by the latest edition of the National Fire Protection Association 72 National Fire Alarm Code. The system shall meet the requirements of all locally adopted codes and standards of the local municipality into which the system is installed and shall be acceptable to the local authority having jurisdiction.

(5) **LICENSED ELECTRICAL CONTRACTOR.** An individual, partnership, corporation, association, or joint venture which is licensed as an electrical contractor engaged in the business of installation of conduit, wire, and fire alarm associated equipment, but does not design, program, certify, inspect, or test fire alarm systems. A licensed electrical contractor is not a fire alarm contractor for the purpose of this chapter.

(6) **NICET.** National Institute for Certification in Engineering Technology.

(7) **STATE FIRE MARSHAL'S PERMIT.** The form issued by the State Fire Marshal to a fire alarm contractor upon application being approved and fee paid. The permit shall be issued in the name of the fire alarm contractor, with the name of the certificate holder noted thereon.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-2**

##### **Administration and enforcement.**

The administration of this chapter is vested in the State Fire Marshal who shall have the power to set or make changes in the amount of the fee charged as necessary for the administration and enforcement of this chapter.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-3**

##### **Applicability; exceptions.**

(a) It shall be unlawful for any individual, partnership, corporation, association, or joint venture to engage in the business of installation, repair, alteration, addition, maintenance, or inspection of a fire alarm system in this state except in conformity with this chapter.

(b) This chapter shall not apply to the following:

(1) The owner of a fire alarm system who employs skilled trained workers who regularly and routinely install, repair, alter, add to, maintain, and inspect fire alarm systems on and within the premises of the owner for the use of the owner only.

(2) A smoke detector installed in a residential dwelling.

(3) A residential combination burglary and fire alarm system installed by a licensed burglary alarm contractor in a residential occupancy as defined in the adopted building code where located.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-4**

##### **Installation; record of completion; maintenance and inspection.**

(a) Every fire alarm system installed in this state shall have a record of completion signed by a certified fire alarm contractor, in accordance with the requirements of the adopted building code and fire alarm code. The record of completion and all supporting documents shall be available for inspection by the State Fire Marshal or his or her designated representative during normal business hours.

(b) Every fire alarm system in this state shall have the name, address, phone number, and permit number of the responsible certified fire alarm contractor attached to the main fire alarm control in a manner as prescribed by and acceptable to the State Fire Marshal.

(c) Every fire alarm system in this state installed after August 1, 2009, shall be maintained and inspected by a certified fire alarm contractor in accordance with the requirements of the most recently adopted version of the National Fire Protection Association 72 National Fire Alarm Code. Testing documentation shall be maintained by the owner for inspection by the State Fire Marshal or his or her designated representative during normal business hours.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-5**

##### **State Fire Marshal's permit - Application; competency test.**

(a) Any individual, partnership, corporation, association, or joint venture desiring to engage in the business as a fire alarm contractor shall submit to the State Fire Marshal on standard forms provided by

the State Fire Marshal a completed application. The applicant shall include a fee of one hundred dollars (\$100) when making the application. The applicant shall designate in the application the name of the proposed certificate holder and provide written proof that the individual has met all of the requirements and passed a competency test administered by NICET as a Fire Alarm System Technician - Level III or above. A copy of the current NICET certificate shall be accepted as sufficient written proof as required above. The State Fire Marshal, upon receipt of the application and fee, shall issue a State Fire Marshal's permit to a fire alarm contractor who has a current State Fire Marshal's permit, or who produces evidence of having a current state permit from another state, if the state has entered into an agreement of reciprocity with the State of Alabama.

(b)(1) Any individual desiring to engage in the programming, maintenance, testing, inspection, certification, or modification of fire alarm systems shall provide current written proof that he or she has passed a competency test administered by the NICET as a Fire Alarm System Technician-Level II or any other acceptable nationally recognized fire alarm technician certification requiring continuing education that is deemed equivalent by the State Fire Marshal.

(2) Each individual, partnership, corporation, association, or joint venture shall have 36 months after August 1, 2009, to be in full compliance with the requirement of this subsection.

(3) A new employee who is hired by a certified fire alarm contractor shall have 12 months from the date of hiring to comply with the requirements of this chapter. A new employee who is not in compliance with this chapter shall work under the direct supervision of the certificate holder of the certified fire alarm contractor.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-6**

##### **State Fire Marshal's permit - Issuance.**

If the required fee has been paid, satisfactory written proof from the NICET has been provided that the requirements have been met and a competency test was passed when required by this chapter, and the proposed certificate holder is found to be a responsible, managing owner, partner, officer, or employee of the fire alarm contractor, the State Fire Marshal within 30 days shall issue a State Fire Marshal's permit in the name of the fire alarm contractor with the name of the certificate holder noted thereon.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-7**

##### **State Fire Marshal's permit - Certificate holder.**

A certificate holder may not obtain a State Fire Marshal's permit for more than one fire alarm contractor at any time. A certificate holder may only hold a certificate for the fire alarm contractor where he or she

is currently employed. If the certificate holder leaves the employment of the fire alarm contractor, the certificate holder shall notify the State Fire Marshal within 30 days. The certificate holder may not obtain a State Fire Marshal's permit for more than one other fire alarm contractor for a period of 12 months thereafter. If the certificate holder leaves the employment of the fire alarm contractor, or dies, the fire alarm contractor shall have nine months to submit a new application proposing designation of another individual as the certificate holder for the applicant. If the application is not received and a new permit issued within the allotted time, the State Fire Marshal shall revoke the permit of the fire alarm contractor.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-8**

##### **State Fire Marshal's permit - Expiration and renewal; reinstatement.**

A State Fire Marshal's permit shall expire annually at midnight on September 30. At least 30 days prior to expiration, a renewal application with a renewal fee shall be submitted. A permit which is not renewed prior to expiration shall be null and void on the expiration date, and it shall be unlawful under this chapter for any individual, partnership, corporation, association, or joint venture to engage in the business of installing, repairing, altering, adding, maintaining, or inspecting a fire alarm system without a validly renewed State Fire Marshal's permit. The permit may be reinstated by making application as before and payment of the fee; however, until the time as a new permit is issued, it shall be unlawful for the fire alarm contractor to engage in installing, repairing, altering, adding, maintaining, or inspecting fire alarm systems.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-9**

##### **State Fire Marshal's permit - Required for license or building permit.**

If a certified fire alarm contractor desires to do business in any part of the state, he or she shall deliver to the local building official a copy of his or her State Fire Marshal's permit. The local building official shall require a copy of the State Fire Marshal's permit before issuing a license or building permit. The certified fire alarm contractor shall pay any fees normally imposed for local licenses or permits. The local official may not impose other requirements on the certified fire alarm contractor to prove competency other than proper evidence of a valid State Fire Marshal's permit.

*(Act 2009-657, p. 2020, §1.)*

#### **Section 34-33A-10**



### **Relation to other provisions; approval of plans.**

Nothing in this chapter limits the power of a municipality, county, or the state to regulate the quality and character of work performed by contractors, through a system of permits, fees, and inspections which are designed to assure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety. Nothing in this chapter limits the power of a municipality, county, or the state to adopt any system of permits requiring submission to and approval by the municipality, county, or the state, of plans and specifications for work to be performed by contractors before commencement of the work. If the plans for a fire alarm system are required to be submitted to and approved by any municipality, county, or the state, or any departments or agencies thereof, the plans shall bear the seal of a professional engineer licensed in the State of Alabama or be submitted by a certified fire alarm contractor. The official authorized to issue building or other related permits shall ascertain that the fire alarm contractor is duly certified by requiring evidence of a valid State Fire Marshal's permit.

*(Act 2009-657, p. 2020, §1.)*

### **Section 34-33A-11**

#### **Compliance with chapter; architects and engineers.**

(a) This chapter applies to any fire alarm contractor performing work for any municipality, county, or the state. Officials of any municipality, county, or the state shall determine compliance with this chapter before awarding any contract for the installation, repair, alteration, addition, or inspection of a fire alarm system. Any bid for a contract shall be accompanied by a copy of a valid State Fire Marshal's permit.

(b) All architects and engineers preparing plans and specifications for work involving fire alarm systems to be contracted in the State of Alabama shall include in their invitation to bidders and their specifications a copy of this chapter or portions as are deemed necessary to convey to the invited bidder that it will be necessary for the bidder to show evidence of licensure before a bid is considered whether the bidder is a resident or nonresident of this state and whether a license has been issued to the bidder or not.

*(Act 2009-657, p. 2020, §1.)*

### **Section 34-33A-12**

#### **Disposition of funds.**

All funds collected pursuant to this chapter shall be deposited in the State Treasury to the credit of the State Fire Marshal's Fund authorized in Section 24-5-10. The State Fire Marshal may expend moneys from the State Fire Marshal's Fund for the administration and enforcement of this chapter. The State Fire Marshal may receive grants and donations from associations, firms, or individuals who are interested in the upgrading and quality of fire alarm systems in compliance with Alabama state ethics laws.

*(Act 2009-657, p. 2020, §1.)*

### **Section 34-33A-13**

#### **Violations.**

Whenever the State Fire Marshal has reason to believe that any individual, partnership, corporation, association, or joint venture is or has been violating any provision of this chapter, the State Fire Marshal or his or her deputy or assistant may issue and deliver to the individual, partnership, corporation, association, or joint venture an order to cease and desist the violation. Failure to comply with any order under this section shall constitute a Class B misdemeanor and shall be punishable as provided by state law. In addition, the State Fire Marshal may impose a civil penalty not to exceed two hundred fifty dollars (\$250) for each day the violation exists. Violation of any provision of this chapter or failure to comply with a cease and desist order shall be cause for revocation of a State Fire Marshal's permit.

*(Act 2009-657, p. 2020, §1.)*

### **Section 36-19-1**

#### **Police powers of Fire Marshal, deputies and assistants.**

The Fire Marshal and his duly appointed deputies and assistants shall have full, general powers of peace officers in this state and may exercise such powers anywhere within the state.

*(Acts 1919, No. 701, p. 1013; Code 1923, §954; Code 1940, T. 55, §30; Acts 1975, No. 1158, p. 2281, §1.)*

### **Section 36-19-2**

#### **Powers and duties of Fire Marshal, deputies and assistants generally.**

The Fire Marshal and his duly appointed deputies and assistants shall have the specific duty of enforcing the laws, regulations and ordinances of the state and the provisions of this article throughout the state in matters relating to:

- (1) Prevention of fires;
- (2) Storage, sale and use of combustibles and explosives;
- (3) Installation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment;
- (4) Construction, maintenance and regulation of fire escapes;

(5) The means and adequacy of exits in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters and all other places in which numbers of persons live, work or congregate from time to time for any purpose or purposes;

(6) Suppression of arson, and the investigation of the cause, origin and circumstance of fires.

The Fire Marshal, his deputies and assistants shall have such other powers and perform such other duties as set forth in other sections of this article and as may be conferred and imposed upon them from time to time by the laws of this state.

*(Acts 1919, No. 701, p. 1013, §2; Code 1923, §954; Code 1940, T. 55, §30; Acts 1975, No. 1158, p. 2281, §1.)*

### **Section 36-19-3**

#### **Persons deemed assistants to Fire Marshal; duties, obligations, etc., thereof generally.**

The chief of the fire department, the chief of police or marshal of every incorporated city or town in which a fire department is established, the mayor of each incorporated town in which no fire department exists and the sheriffs of the several counties of the state shall be, by virtue of such offices so held by them, assistants to the Fire Marshal, subject to the duties and obligations imposed by this article and subject to the direction of the Fire Marshal in the execution of the provisions of this article.

*(Acts 1919, No. 701, p. 1013, § 4; Code 1923, §958; Code 1940, T. 55, §33.)*

### **Section 36-19-4**

#### **Right of Fire Marshal, etc., to enter buildings, etc., for purposes of investigations or inspections.**

The Fire Marshal, his deputies or any of his assistants may at all hours enter any building or premises within this state for the purpose of making an investigation or inspection which under the provisions of this article he or they may deem necessary to be made.

*(Acts 1919, No. 701, p. 1013, §5; Code 1923, §976; Code 1940, T. 55, §50.)*

### **Section 36-19-5**

#### **Investigation and reporting of fires by assistants generally.**

The assistants to the Fire Marshal provided for in Section 36-19-3 shall investigate the cause, origin and circumstance of every fire occurring in any municipality or place in this state by which property has been destroyed or damaged, to determine, so far as it is possible, whether the fire was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of the fire by

the assistant in whose territory such fire has occurred; and, if it appears to the officer making the investigation that such fire is of suspicious origin, the Fire Marshal shall be immediately notified of such fact.

*(Acts 1919, No. 701, p. 1013, §5; Code 1923, §959; Code 1940, T. 55, §34.)*

#### **Section 36-19-6**

##### **Reports of fires to Fire Marshal by assistants.**

Every fire occurring in the state shall be reported in writing to the Fire Marshal within 10 days after the occurrence of the same by the officer designated in Section 36-19-3 in whose jurisdiction such fire has occurred. Such report shall be in the form prescribed by the Fire Marshal and shall contain a statement of all facts relating to the cause and origin of such fire that can be ascertained, the extent of damages thereof, the amount of insurance on such property, if any, and such other information as may be required.

*(Acts 1919, No. 701, p. 1013, §5; Code 1923, §960; Code 1940, T. 55, §35.)*

#### **Section 36-19-7**

##### **Appointment of deputy inspectors; powers and compensation thereof generally; deputy inspectors to be commissioned.**

The Fire Marshal may, in addition to the provisions of Section 36-19-3, appoint any person or persons who may be known to him as being competent and skilled in making such inspections of buildings and their contents as deputy inspectors in this department. Such deputy inspectors shall have all the powers of other deputies and assistants to enter any building or premises to make inspection of such buildings and their contents and to report such inspections in writing to the office of the Fire Marshal where they find faulty or hazardous conditions. Such deputy inspector shall be duly commissioned and shall serve without compensation.

*(Acts 1919, No. 701, p. 1013, §17; Code 1923, §983; Code 1940, T. 55, §56.)*

#### **Section 36-19-8**

##### **Maintenance of statement of expenses of department; allowance and payment of vouchers for expenses.**

The Fire Marshal shall keep on file in his office an itemized statement of all expenses incurred by his department. All vouchers issued therefor shall be submitted to the Comptroller for payment, which said vouchers shall be allowed and paid in the same manner as are other claims against the state.

*(Acts 1919, No. 701, p. 1013, §6; Code 1923, §964; Acts 1939, No. 170, p. 294, §A; Code 1940, T. 55, §37.)*

#### **Section 36-19-9**

#### **Promulgation of regulations for fire prevention and protection of any construction or building, etc., and keeping, storing, etc., of explosives, etc., by fire marshal.**

The fire marshal, subject to the approval of the commissioner of insurance, shall make regulations for fire prevention and protection of any construction or building, exits or other safety measures and the keeping, storing, use, manufacture, sale, handling, transportation or other disposition of rubbish and highly inflammable materials, gunpowder, dynamite, carbide, crude petroleum or any of its products, explosives or inflammable fluids or compounds, tablets, torpedoes or any explosive of like nature including all fireworks, and may prescribe the material and construction of receptacles and buildings to be used for any of said purposes.

*(Acts 1919, No. 701, p. 1013; Code 1923, §966; Code 1940, T. 55, §38; Acts 1971, No. 1982, p. 3230.)*

#### **Section 36-19-10**

#### **Regulation of emergency drills and doors and exits in schools, factories, hospitals, etc.**

The Fire Marshal, his or her deputies and assistants shall require officials and teachers of public and private schools and educational institutions to have at least one emergency drill each month and to have all doors and exits at such schools and educational institutions open out and that all such doors and exits shall be unlocked during school hours and that the doors and exits of factories, asylums, hospitals, churches, halls, theatres, amphitheatres, and other places in which numbers of persons live, work, or congregate from time to time, for any purpose or purposes, shall open out. For the purposes of this section, an emergency drill shall include, but not be limited to, a fire drill, severe weather drill, or code red drill as provided in Section 16-1-44.

*(Acts 1919, No. 701, p. 1013, §13; Code 1923, §981; Code 1940, T. 55, §55; Act 2013-329, §1.)*

#### **Section 36-19-11**

#### **Inspection of buildings, etc., by Fire Marshal, deputies or assistants; issuance of order for removal of combustible matter, correction of inflammable conditions, etc.**

The Fire Marshal, his deputies or assistants, upon the complaint in writing of any citizen, or whenever he or they shall deem it necessary, shall inspect at all reasonable hours any and all buildings or premises within their jurisdiction. When any such officer shall find any building or other structure which, for want of repairs, lack of sufficient fire escapes, automatic or other fire alarm apparatus or fire extinguishing equipment or by reason of age or dilapidated condition or from any other cause, is especially liable to

fire and is situated so as to endanger life or property, and whenever any such officer shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such building, he or they shall order the same removed or remedied, and such order shall be immediately complied with by the owner or occupant of such premises or buildings.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §967; Code 1940, T. 55, §39.)*

#### **Section 36-19-12**

##### **Appeal from order to circuit court.**

The owner or occupant of such building or premises may, within five days, appeal to the circuit court of the county in which the property is located, which shall within 10 days review such order and file a decision thereon; and, unless by the authority of said court the order is revoked or modified, it shall remain in full force and be complied with within the time fixed in said order or decision of the circuit court.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §968; Code 1940, T. 55, §40.)*

#### **Section 36-19-13**

##### **Appeal from decision of circuit court to Court of Civil Appeals.**

Any owner or occupant who feels himself aggrieved by any such order or affirmed order may, within 10 days after the making or affirming of any such order by the circuit court, file his appeal with the Court of Civil Appeals, to review such order or judgment. Such parties as shall file an appeal in the Court of Civil Appeals to review such order shall file with said court a bond in an amount to be fixed by said court, with at least two sufficient sureties, to be approved by the court, conditioned to pay all the costs on such appeal in case such appellant fails to sustain the said appeal or same is dismissed for any cause.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §969; Code 1940, T. 55, §41.)*

#### **Section 36-19-14**

##### **Repair, etc., of buildings, etc., upon failure of party, etc., to obey order of court; payment of expenses thereof.**

In case the order of the circuit court is sustained or the appeal dismissed for any cause, if any party or parties fail to comply with the order as modified on appeal by the circuit court or Court of Civil Appeals as provided in this article and within the time fixed by said courts, the said court may cause such building or premises to be repaired, torn down, demolished, materials removed and all dangerous conditions remedied, as the case may be, at the expense of such party or parties; and, if such party or

parties within 30 days thereafter fail, neglect or refuse to repay such officer the expense thereby incurred by him, such officer shall certify said expense to the Fire Marshal, and the Fire Marshal shall immediately pay said expense out of the Fire Marshal Fund.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §970; Code 1940, T. 55, §42.)*

#### **Section 36-19-15**

##### **Lien for expenses of repair, etc., paid by Fire Marshal.**

The expense so paid by the Fire Marshal shall be a lien on the property, including the real estate on which the property is located. Such lien shall be superior and prior to all other liens on such property except the lien for taxes assessed and due the state, county and municipality wherein said property is located and vendor's lien, and the Fire Marshal shall institute legal proceedings within 30 days after such payment to enforce said lien in any court of record, and the Fire Marshal may enjoin one or more parties occupying the same or different premises in the same action. In order to make the lien against said property valid and binding, the Fire Marshal, his deputies or assistants shall immediately upon serving the order provided in this article upon any party or parties file a copy of said order in the probate judge's office of the county wherein said property is located and cause the same to be registered, and, for the registration of such order, the judge of probate of any county shall receive a fee of \$.50 to be added to the cost and expense of executing said order, and such copy of such order shall be filed in the probate judge's office of the county wherein said property is located before or at the time said order is served upon the owner or occupant of said premises, and such order, when so filed, shall be notice to all parties.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §971; Code 1940, T. 55, §43.)*

#### **Section 36-19-16**

##### **Fire Marshal may request district attorney to assist in investigations, etc.; effect of refusal to assist Fire Marshal.**

The Fire Marshal or deputy fire marshal, when in the opinion of either of them it is necessary, may request the district attorney to aid in any investigations or examinations that may be made under the provisions of this article. Any officer who refuses to aid the Fire Marshal or deputy fire marshal in carrying out the provisions of this article shall be deemed guilty of willful neglect of duty and dealt with accordingly.

*(Acts 1919, No. 701, p. 1013, §8; Code 1923, §972; Code 1940, T. 55, §44.)*

#### **Section 36-19-17**

##### **Taking, etc., of testimony by Fire Marshal, etc., during investigations.**



The Fire Marshal or his deputies, when in their opinion it is necessary, may take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or have means of knowledge in relation to the matter as to which an investigation is being held and shall cause the same to be reduced to writing.

*(Acts 1919, No. 701, p. 1013, §9; Code 1923, §973; Code 1940, T. 55, §45.)*

#### **Section 36-19-18**

#### **Fire Marshal may cause persons to be arrested and charged with offenses; furnishing of information to district attorneys having jurisdiction of offenses.**

If the Fire Marshal shall be of the opinion that there is evidence sufficient to charge any person with an offense, he shall cause such person to be arrested and charged with such an offense as the evidence may warrant and shall furnish to the district attorney of any court having jurisdiction of the offense all the information obtained by him, including a copy of all pertinent and material testimony taken, together with the names of the witnesses.

*(Acts 1919, No. 701, p. 1013, §9; Code 1923, §974; Code 1940, T. 55, §46.)*

#### **Section 36-19-19**

#### **Fire Marshal, etc., may summon witnesses, require production of books, etc.**

The Fire Marshal or his deputies may, each, in any county of this state, summon and compel the attendance of witnesses before them or either of them to testify in relation to any matter which is, by the provisions of this article, a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto by them or either of them. The said Fire Marshal or his deputies may each administer oaths and affirmations to any person or persons appearing as witnesses before them, and false swearing in any matter or proceedings aforesaid shall be deemed perjury and shall be punished as such.

*(Acts 1919, No. 701, p. 1013, §9; Code 1923, §975; Code 1940, T. 55, §47.)*

#### **Section 36-19-21**

#### **Imprisonment of witness for contempt upon complaint of Fire Marshal, etc.**

The Fire Marshal or deputy fire marshal may make formal complaint of the act of such witness to the judge of any court of record of the county in which the investigation is being held; and, if it shall then appear that the witness is guilty of a violation of Section 36-19-20, he shall, unless good cause is shown to the contrary, be imprisoned in the county jail until he purges himself of contempt.

*(Acts 1919, No. 701, p. 1013, §9; Code 1923, §4052; Code 1940, T. 55, §49.)*

#### **Section 36-19-22**

##### **Fees of witnesses and officers serving subpoenas, etc.**

Every person summoned and testifying before the Fire Marshal, his deputies or assistants shall receive from the funds for the maintenance of this department, on the certificate of the Fire Marshal for witness fees and mileage, such sum or sums as provided for witnesses testifying in the circuit courts of the state, and officers serving subpoenas and rendering other services to the Fire Marshal shall be paid in like manner for like services in such courts.

*(Acts 1919, No. 701, p. 1013, §9; Code 1923, §977; Code 1940, T. 55, §51.)*

#### **Section 36-19-23**

##### **Payment of fees to local assistants not receiving salary from state.**

All local assistants not receiving a salary from the State of Alabama shall receive monthly on the audit of the Fire Marshal \$.50 for each report of each separate fire reported to the Fire Marshal under the provisions of this article; provided, that the loss by such fire shall exceed the amount of \$25.00. In addition thereto there shall be paid to the chiefs of the fire departments or to the mayor in each incorporated municipality or place in which no paid fire department exists or to any other authorized citizen without the limits of an incorporated municipality or place, whose duty it shall have been to make and who has actually made an investigation of such fire and reported same to the fire marshal, the sum of \$.15 per mile for each mile traveled to the place of the fire and, where an investigation has been made, a sum not to exceed \$3.00 for each day's service spent in making such investigation. Such fees shall be paid only after conclusive evidence is furnished that such service has been ordered by the Fire Marshal and has been performed in accordance with the provisions of this article, upon itemized vouchers and upon oath.

*(Acts 1919, No. 701, p. 1013, §12; Code 1923, §980; Code 1940, T. 55, §54.)*

#### **Section 36-19-24**

##### **Reports by insurance companies as to fire losses.**

Every fire insurance company transacting business in this state shall report to the Fire Marshal, through the secretary or other representative of the insurance company, all fire losses on all property insured in such company within the state, showing the owner and occupant of the premises burned, the date of the fire, the location, the cause of the fire, occupancy, the amount of insurance, the sound value of the property and the amount of loss paid. Such report shall be made monthly on or before the tenth day of

each month. In case of fire of suspicious origin, an immediate preliminary report shall be made through a representative of the insurance company, stating the name of the owner and occupant of the premises burned, the date of the fire, the location and occupancy and such other facts and circumstances as known by them tending to establish the cause and origin of the fire. Such report shall be in addition to and not in lieu of any report that such company may be required to make by any law of the state to the Commissioner of Insurance or other state officer.

*(Acts 1919, No. 701, p. 1013, §18; Code 1923, §984; Code 1940, T. 55, §57.)*

#### **Section 36-19-25**

##### **Records of fires to be kept by Fire Marshal.**

The Fire Marshal shall keep in his office a record of all fires occurring in this state and all the facts concerning same, including statistics as to the extent of such fires, the damage caused thereby, whether such losses were covered by insurance and, if so, in what amount. Such records shall be made daily from the reports made to him by his assistants under the provisions of this article. All such records shall be public, except any testimony taken in an investigation under the provisions of this chapter, which the Fire Marshal, in his discretion, may withhold from the public.

*(Acts 1919, No. 701, p. 1013, §10; Code 1923, §978; Code 1940, T. 55, §52.)*

#### **Section 36-19-26**

##### **Annual report of Fire Marshal to Governor.**

The Fire Marshal shall annually, on or before April 1, transmit to the Governor a full report of his proceedings under this chapter and such statistics as he may wish to include therein for the year previous. He shall also recommend any amendments to the law which in his judgment shall be deemed advisable. The report of said Fire Marshal shall include a full and complete report of all collections made and all expenditures and for what purpose the same were made and to whom paid.

*(Acts 1919, No. 701, p. 1013, §11; Code 1923, §979; Code 1940, T. 55, §53.)*

#### **Section 36-19-27**

##### **Failure of person or corporation to comply with provisions of chapter as to requirements of Fire Marshal.**

Any person or persons or corporation failing to comply with the provisions of this article as to the requirements of the Fire Marshal shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$10.00 nor more than \$50.00 for each violation thereof.

*(Acts 1919, No. 701, p. 1013, §7; Code 1923, §4053; Code 1940, T. 55, §58.)*

#### **Section 36-19-29**

##### **Disposition of penalties, fees or forfeitures collected under provisions of chapter.**

All penalties, fees or forfeitures collected under the provisions of this article, unless otherwise provided, shall be placed in the General Fund of the State.

*(Acts 1919, No. 701, p. 1013, §15; Code 1923, §982; Acts 1939, No. 380, p. 505, §1; Code 1940, T. 55, §36.)*

#### **Section 36-19-40**

##### **"Insurer" defined.**

As used in this article, the word "insurer" shall have the same meaning ascribed to it as is in Section 27-13-20.

*(Acts 1979, No. 79-706, p. 1257, §1.)*

#### **Section 36-19-41**

##### **Insurer to cooperate with and supply factual information to law enforcement personnel investigating fire loss; type of factual information.**

The State Fire Marshal or personnel from any other authorized law enforcement agency charged with the responsibility of investigating a fire loss, may request any insurer investigating a fire loss of real or personal property to release any factual information in its possession which is pertinent to this type of loss and has some relationship to the loss itself. Such insurer shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but is not limited to:

- (1) Any insurance policy relevant to a fire loss under investigation and any application for such a policy;
- (2) Policy premium payment records;
- (3) History of previous claims made by the insured for fire loss; and
- (4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

*(Acts 1979, No. 79-706, p. 1257, §2.)*

#### **Section 36-19-42**

##### **Insurers suspecting arson, etc., to notify and cooperate with law enforcement personnel.**

If an insurer has reason to believe that a fire loss to its insured's real or personal property was caused by other than accidental means, the insurer shall notify the State Fire Marshal or other appropriate law enforcement agency charged with the responsibility to investigate fire losses and furnish such persons with all relative material acquired during its investigation of the fire loss, cooperate with and take such reasonable action as may be requested by any law enforcement agency, and cooperate with the court and administrative agencies of the state, and any official from said Fire Marshal's office or any law enforcement agency charged with the responsibility to investigate the fire.

*(Acts 1979, No. 79-706, p. 1257, §3.)*

#### **Section 36-19-43**

##### **Insurer or agents not liable for compliance with division; confidentiality; testimony; violations.**

(a) In the absence of fraud or malice, no insurer, or person who furnishes information on its behalf, shall be liable for damages in a civil action or subject to criminal prosecution for any oral or written statement made or any other action taken that is necessary to supply information required by this article.

(b) The officials and departmental and agency personnel receiving any information furnished pursuant to this article shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(c) Any official referred to in Section 36-19-41 may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

(d) No person shall purposely refuse to release any information requested, pursuant to Section 36-19-41, by a Fire Marshal, an assistant fire marshal, the chief or deputy of an arson squad or bureau, the chief of a fire department or a fire prevention officer.

(e) No person shall refuse to make the necessary notification of a fire loss pursuant to Section 36-19-42.

(f) No person shall refuse to supply to the proper authorities pertinent information required to be furnished pursuant to Section 36-19-42.

(g) No person shall fail to hold in confidence information required to be held in confidence by subsection (b) of this section.

*(Acts 1979, No. 79-706, p. 1257, §4.)*

#### **Section 36-19-44**

##### **Penalties; good faith compliance exception.**

Any person violating the provisions of subsections (d), (e), (f) and (g) of Section 36-19-43 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than \$100.00 nor more than \$500.00. It shall not be considered a violation of this article if an insurer in good faith, believes it has done everything required of it under this article.

*(Acts 1979, No. 79-706, p. 1257, §5.)*

#### **Section 36-21-7**

##### **Reimbursement by new employer for training expenses.**

In those instances in which a law enforcement officer, certified corrections officer, fire protection personnel, or firefighter of any municipality, county, sheriff's department, fire district, or the state is employed by the State of Alabama, any county, sheriff's department, fire district, or another municipality, within 24 months after completing the training requirements mandated by Article 3 (commencing with Section 36-21-40) of this chapter, or by Chapter 32 (commencing with Section 36-32-1), the total expense of the training, including, but not limited to, salary paid during training, transportation costs paid to the trainee for travel to and from the training facility, room, board, tuition, overtime paid to other employees who fill in for the trainee during his or her absence, and any other related training expenses, shall be reimbursed to the municipality, county, fire district, or the state which paid for the training. The municipality, county, fire district, or the state which paid for the training shall submit an itemized sworn statement to the new employer of the law enforcement officer, fire protection personnel, or firefighter, as the case may be, shall demand payment thereof, and may enforce collection of the obligation through civil remedies and procedures. The term "law enforcement officer", shall have the same meaning as in Section 36-21-40 and the term "fire protection personnel and firefighter", shall have the same meaning as in Section 36-32-1.

*(Acts 1980, No. 80-729, p. 1472, §1; Acts 1988, No. 88-315, p. 477, §1; Acts 1996, No. 96-626, p. 997, §1; Act 2002-424, p. 1090, §1.)*

#### **Section 36-21-11**

##### **Preference given to police officers and fire fighters suffering from diseases without known cure in admission to research programs.**

Whereas the sworn, full-time, regular employed state, county and municipal police officers of this state are required by law and policy to enforce the penal laws of the State of Alabama; and fire fighters must expose themselves to the dangers of fire suppression and hazardous material incident control; and in so

doing augment the dangers inherent in such duty; it is the sense of the Legislature of Alabama that if such police officers or fire fighters contract any disease deemed crippling or fatal, because of the lack of a known cure, such police officers or fire fighters shall be given preferential treatment towards admission to any research program at any state-owned or supported medical facility, hospital or learning center in the State of Alabama.

*(Acts 1985, No. 85-542, p. 781, §1.)*

#### **Section 36-21-100**

##### **Short title.**

This article shall be known and cited as the "Police Officer's and Firefighter's Survivors Educational Assistance Act."

*(Acts 1987, No. 87-609, p. 1058, §1.)*

#### **Section 36-21-101**

##### **Definitions.**

As used in this article, unless the context requires otherwise, the following terms shall have the following meanings:

- (1) BOARD. Tuition Eligibility Board.
- (2) ELIGIBLE PROGRAM. Any program leading to a diploma, certificate, or undergraduate degree in a state college, state community college, state junior college, state technical college, or state university.
- (3) TUITION. The cost of instruction and fees to the student as stated in the institution's catalog, plus the cost of books and supplies.
- (4) VOLUNTEER FIREFIGHTER. Any person who meets all requirements set forth by his or her department, as attested by the chief of that department, and who is any of the following:
  - a. A member of a certified volunteer fire department as provided in Section 9-3-17.
  - b. A volunteer firefighter of a fire department of an incorporated municipality.
  - c. A volunteer firefighter of a fire district established pursuant to state law.

*(Acts 1987, No. 87-609, p. 1058, §2; Act 2009-631, p. 1935, §1.)*



### **Section 36-21-102**

#### **Tuition benefits; eligibility.**

Upon the effective date of Act 2009-631, when a full-time law enforcement officer or full-time firefighter employed by the state, by any county, or by any municipality, or a volunteer firefighter is or was killed or becomes totally disabled in the line of duty, free tuition for undergraduate study at any state college, state community college, state junior college, state technical college, in the State of Alabama, and other costs officially prescribed for the classes in the course of study, shall be paid for the following:

- (1) Any dependent child, natural or adopted, under 21 years of age at the time of death or total disability of the law enforcement officer or firefighter;
- (2) A spouse who has not remarried, provided initial enrollment is within five years of the death or total disability of the law enforcement officer or firefighter or volunteer firefighter.

*(Acts 1987, No. 87-609, p. 1058, §3; Act 99-448, p. 1039, §1; Act 2000-808, p. 1920, §1; Act 2009-631, p. 1935, §1.)*

### **Section 36-21-103**

#### **Forms and applications for implementation.**

The Alabama Commission on Higher Education shall provide the necessary forms and applications for the implementation of this article, and shall supervise said implementation with the state college, state community college, state junior college, state technical college, or state university concerned.

*(Acts 1987, No. 87-609, p. 1058, §4.)*

### **Section 36-21-104**

#### **Tuition Eligibility Board.**

There is created the Tuition Eligibility Board, which shall determine the eligibility of any persons applying under the provisions of this article. The Tuition Eligibility Board shall certify to the Alabama Commission on Higher Education the eligible persons to receive tuition assistance under the provisions of Section 36-21-102. The Tuition Eligibility Board shall consist of two members appointed by the Governor, one member appointed by the Executive Board of the Alabama Education Association, one member appointed by the Board of Directors of the Alabama State Policemen's Association, Inc., one member appointed by the Professional Firefighter's Association of Alabama, one member appointed by the Alabama Firefighter's Association, one member appointed by the Alabama State Lodge of the Fraternal Order of Police, one member appointed by the Alabama State Troopers Association, and one member appointed by the Board of Directors of the Alabama Peace Officers' Association. Each member shall serve four years from the date of appointment and shall have the right of succession. The board

shall elect a chairperson from among the members and shall coordinate the implementation of this article with the Alabama Commission on Higher Education. The chairperson shall call meetings of the board to determine eligibility of applicants. Each board member shall receive reimbursement of expenses for duties performed in accordance with the provisions of this article. A majority of the members appointed shall constitute a quorum.

*(Acts 1987, No. 87-609, p. 1058, § 5; Act 99-448, p. 1039, § 1.)*

#### **Section 36-21-105**

##### **Appropriation of funds.**

There is hereby appropriated annually from the Education Trust Fund of the State Treasury the amount sufficient to carry out the provisions of this article and the administrative expenses incident thereto.

*(Acts 1987, No. 87-609, p. 1058, §6; Acts 1990, No. 90-239, p. 297, §1.)*

#### **Section 36-21-160**

##### **Termination for loss of work during emergency response prohibited.**

(a) As used in this section, the following terms shall have the following meanings:

(1) EMERGENCY. Going to, attending to, or coming from any of the following:

- a. A fire call.
- b. A hazardous or toxic materials spill and cleanup.
- c. Any other situation to which a volunteer fire department has been dispatched.
- d. An actual medical emergency to prevent the imminent loss of life.

(2) EMPLOYER. 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 any employee.

(3) VOLUNTEER EMERGENCY WORKER. An individual who does not receive monetary compensation for his or her service as a volunteer firefighter, emergency medical technician, rescue squad member, volunteer deputy, or a ham radio operator conducting storm spotter operations for an emergency management association.

(b) No employer may terminate an employee who is a member of a volunteer fire department and who, in the line of emergency duty as a volunteer firefighter, responds to an emergency call prior to the time the employee is due to report to work and which emergency results in a loss of time from employment.

Any time lost from employment as provided in this section may be charged against the regular compensation of the employee. Prior to missing work, the employee shall attempt to contact his or her employer to notify the employer that the employee has been dispatched to an emergency. At the request of the employer, an employee losing time as provided herein shall supply the employer with a statement from the chief of the volunteer fire department stating that the employee responded to an emergency call and the time thereof.

(c) No employer may terminate an employee who is a member of an emergency medical service and who, in the line of emergency duty as an emergency medical service member, responds to an emergency call prior to the time the employee is due to report to work and which emergency results in a loss of time from employment. Any time lost from employment as provided in this section may be charged against the regular compensation of the employee. At the request of the employer, an employee losing time as provided herein shall supply the employer with a statement from the fire department or emergency medical services stating that the employee responded to an emergency call and the time thereof.

(d) Any employer who willfully and knowingly violates this section shall be required to reinstate the employee to the employee's former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement.

(e) Any action to enforce this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county in which the place of employment is located.

(f) Nothing in this section shall prohibit an employer from terminating an employee covered in this section for lawful reasons other than responding to an emergency call that results in loss of time from employment.

*(Act 2006-428, p. 1058, §§1, 2.)*

### **Section 36-21-180**

#### **Definitions.**

When used in this article, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) BOARD. The board of commissioners of the fund and any successors thereto.

(2) ERS. The Employees' Retirement System of Alabama.

(3) EXECUTIVE DIRECTOR. The executive director of the board.

(4) FIREFIGHTER. Any firefighter as certified by the Alabama Firefighters Personnel Standards and Education Commission. The term also includes any volunteer firefighter who is a member of a certified volunteer fire department under Section 9-3-17.

(5) **FUND.** The Alabama Firefighters Annuity and Benefit Fund created in this article.

(6) **MEMBER.** Any firefighter who is a member of the fund and who is in good standing by virtue of having paid all sums required by this article.

(7) **MEMBERSHIP SERVICE.** The period of employment of a member as a firefighter from the date he or she becomes a member.

(8) **MONTH.** A period of 30 days.

(9) **PRIOR SERVICE.** The period of employment of a member as a firefighter from the time of initial employment as a firefighter to October 1, 2010.

(10) **QUALIFIED SERVICE.** The prior service plus membership service of a member.

(11) **YEAR.** A period of 365 days. The last year of employment as a firefighter when over six months of membership service shall constitute a year toward service retirement.

*(Act 2010-726, p. 1818, §1.)*

#### **Section 36-21-181**

#### **Board of Commissioners of the Alabama Firefighters Annuity and Benefit Fund - Creation; composition.**

(a) There is created a board to be known as the Board of Commissioners of the Alabama Firefighters Annuity and Benefit Fund. The board shall be composed of the following members:

(1) A consumer member appointed by the Governor for an initial term of two years.

(2) A volunteer firefighter appointed by the Alabama Association of Volunteer Fire Departments for an initial term of two years.

(3) A volunteer firefighter appointed by the Alabama Firefighters Association for an initial term of four years.

(4) A paid firefighter appointed by the Professional Firefighters Association of Alabama for an initial term of four years.

(5) A paid firefighter appointed by the Alabama Association of Fire Chiefs for an initial term of four years.

(b) Thereafter, each member of the board shall serve for a period of four years. Any member of the board shall be eligible to succeed himself or herself. The term of each person appointed or elected to the board shall begin on the date of appointment or election, and any person so appointed or elected whose successor has not been appointed or elected shall continue to serve until the appointment or election of a

successor. Any member of the board who shall cease to be a member during his or her incumbency shall be replaced as a member of the board by the appointing authority for the remainder of the unexpired term.

*(Act 2010-726, p. 1818, §2.)*

#### **Section 36-21-182**

##### **Board of Commissioners of the Alabama Firefighters Annuity and Benefit Fund - Compensation.**

All board members shall be paid thirty dollars (\$30) per day and mileage and per diem for attendance of board meetings. When a board member is traveling on fund business, he or she shall receive the same mileage and per diem as allowed for state employees while attending state business.

*(Act 2010-726, p. 1818, §3.)*

#### **Section 36-21-183**

##### **Board of Commissioners of the Alabama Firefighters Annuity and Benefit Fund - Powers and duties.**

The board shall have the following powers in carrying out its responsibilities:

- (1) To collect all moneys provided in this article to be collected by it.
- (2) To provide for and maintain all necessary administrative facilities and personnel.
- (3) To provide for payment of all administrative salaries, fees, and expenses.
- (4) To cause its moneys to be invested in a manner consistent with the ERS investment policies and practices.
- (5) To pass upon all applications for annuities and benefits provided for in this article.
- (6) To adopt such rules as may be necessary or desirable to expedite the administration of the affairs of the board pursuant to the Alabama Administrative Procedure Act.
- (7) To provide upon request descriptive literature regarding the fund.
- (8) To pay all benefits and annuities that may be determined to be due under this article and under the rules of the board.
- (9) To make refunds and repayments to which members may be entitled under this article.

(10) To employ such agents, attorneys, actuaries, and other specialized personnel as shall be necessary or desirable to enable the board to carry on its functions in a proper and actuarially sound manner.

(11) To receive by gift, grant, devise, or bequest any moneys or properties of any nature or description.

(12) To carry out any powers expressly granted to the board elsewhere in this article.

(13) All other powers necessary for the proper administration of this article.

*(Act 2010-726, p. 1818, §4.)*

#### **Section 36-21-184**

#### **Board of Commissioners of the Alabama Firefighters Annuity and Benefit Fund - Maintenance of records.**

The board shall keep permanent records of its membership, receipts, disbursements, and all of its other affairs under this article. Such records of the members shall show, with respect to each member, his or her name, age, date of beginning of prior service, date of beginning of membership service, the amount of all payments made by him or her to the fund, the date of any incapacity and the nature thereof and reason therefor, the amount of all annuities or benefits, if any, paid to him or her under this article, and such other information with respect to each member as shall be deemed necessary by the board for the proper determination of eligibility for annuities and benefits under this article and the amount of potential liability of the fund for the same. All records, papers, documents, and other data of the board shall be carefully preserved in a safe, secure, and permanent manner.

*(Act 2010-726, p. 1818, §5.)*

#### **Section 36-21-185**

#### **Alabama Firefighters Annuity and Benefit Fund.**

(a) A special fund is established for the purpose of providing retirement allowances and other benefits for members of the fund. The fund shall be known as the Alabama Firefighters Annuity and Benefit Fund. All amounts received by the board shall be paid into the fund.

(b) The board shall deliver all moneys not currently needed for the functioning of the board to the ERS for investment and reinvestment as determined by ERS administrative policies and practices. The ERS shall charge a reasonable fee for providing investment services to the board. The board shall comply with all administrative policies and requests of the ERS regarding investment services provided by the ERS. The board shall have such control of the fund as is consistent with this article and with the laws of the state.

(c) All moneys of the board not currently invested by the ERS shall be held in a special trust account or accounts in any bank or banks in the state and may be withdrawn therefrom by voucher, check, or electronic debit by the executive director pursuant to authorization given by the board. The board may expend moneys in the fund in accordance with this article.

*(Act 2010-726, p. 1818, §6.)*

#### **Section 36-21-186**

##### **Funding.**

(a) In order to fund this article, a minimum annual fee of two dollars (\$2) may be voluntarily contributed from either or both the income tax return of the contributor and the annual ad valorem statement of the contributor by indicating on a check-off box which shall be provided. The checkoff shall be described as the Alabama Firefighters Annuity and Benefit Fund. If a taxpayer voluntarily indicates, two dollars (\$2) or more shall be added to his or her income tax amount due or his or her property tax due, or both, respectively, and shall be paid to the appropriate person or authority administering the program. The voluntary contribution or contributions made by the taxpayer shall be distributed by the appropriate person or authority administering the program to the fund created by this article.

(b) The net amount of all such fees shall be remitted by the person or authority collecting the same to the executive director on the tenth day of each month next succeeding that in which the fee is paid.

*(Act 2010-726, p. 1818, §7; Act 2011-312, §1.)*

#### **Section 36-21-187**

##### **Participation in fund; fees.**

(a) Participation in the fund established by this article is entirely elective on the part of a firefighter, and the benefits provided herein are in addition to any other benefits provided by law for firefighters.

(b) Each firefighter who becomes a member shall pay to the fund a regular fee of twenty dollars (\$20) per calendar month, to be paid on or before the tenth calendar day of each month so long as he or she is a member or until he or she becomes entitled to benefits under this article. A member who has 25 years of qualified service in the fund and having met all other requirements of the law and thereby having earned maximum benefits provided will no longer be required to make monthly contributions for his or her membership and will retain all of the rights and privileges as provided any other member.

(c) Six months from April 30, 2010, all applicants for membership who join the fund shall pay an initial fee of twenty dollars (\$20) and twenty dollars (\$20) per month as long as they maintain their membership, with no regard given for firefighter service prior to the date of application.



(d) If any member does not pay the monthly fee for 60 days after its due date, the board shall give him or her notice of termination of his or her membership in the fund and of his or her right to a refund and, unless he or she makes application for a refund within 60 days after the mailing of the notice, all amounts heretofore paid by him or her to the fund shall be returned to him or her. Any member so terminated who later applies for membership in the fund shall lose credit for all of his or her prior qualified service up to the time of such termination and, upon approval of his or her new application, shall become a new member in the fund.

*(Act 2010-726, p. 1818, §8.)*

#### **Section 36-21-188**

##### **Prior service credit.**

Any firefighter who becomes a member of the fund and who thereafter leaves work as a firefighter and is drafted or enters directly into the Armed Forces of the United States and who returns to work as a firefighter within six months after he or she ceases to serve in the armed forces shall receive prior service credit for such service in the armed forces, not to exceed five years.

*(Act 2010-726, p. 1818, §9.)*

#### **Section 36-21-189**

##### **Retirement annuity.**

(a) Any member, at any time after reaching the age of 62 and completion of at least 25 years' qualified service, shall be entitled to an annuity benefit.

(b) The amount of the monthly benefit shall be determined by the board in an amount recommended by the actuary for the fund. The benefit shall begin upon approval by the board on the date of the member's application for the benefits on forms provided by the board, but in no event shall the benefit begin prior to his or her termination of service as a firefighter. The benefits shall be paid for the life of the member, except as otherwise provided in this section.

(c) Any application made pursuant to this section shall contain evidence satisfactory to the board of the date of birth of the member. If any member receiving retirement benefits reenters employment as a firefighter, the payment of retirement benefits shall be terminated as long as he or she is so employed. Upon termination of his or her reemployment as a firefighter, the benefits shall resume if, during the period of reemployment, he or she has made all required monthly payments to the fund. Any employment as a firefighter after the initial retirement and during which the payments are made to the fund shall be included in the computation of membership service for the purpose of determining further rights and benefits under this section.

(d) Notwithstanding any other provision of this article to the contrary, an active and contributing member of the fund may purchase service credit in the fund for prior service rendered as a full-time firefighter within this state which would have qualified at the time for membership in the fund. The prior service credit may be claimed within two years of joining as a member of the fund by making a lump-sum payment in the amount of the full actuarially determined cost for each year of prior service credit purchased as determined by the actuary for the fund.

*(Act 2010-726, p. 1818, §10.)*

#### **Section 36-21-190**

##### **Disability benefits.**

(a) Any member who becomes totally or permanently disabled as a result of a heart attack or any injury received in the line of duty as a firefighter, not as a result of his or her misconduct, and who makes proper application to the board on a form supplied by the board and submits evidence satisfactory to the board of such total or permanent disability and the circumstances giving rise to its occurrence, shall be entitled to be paid benefits. The board may require that any applicant for benefits under this section be examined by one or more physicians on behalf of the board and at its expense. Failure of any such applicant to subject himself or herself to such examination shall be sufficient grounds for the board to deny payment of benefits under this section. Any benefit paid under this section shall be paid for a period of not longer than 24 calendar months as follows:

(1) Seventy-two dollars (\$72) per calendar month if his or her qualified service is not more than 35 months.

(2) One hundred eight dollars (\$108) per calendar month if his or her qualified service is at least 36 months and not more than 47 months.

(3) One hundred forty-four dollars (\$144) per calendar month if his or her qualified service is at least 48 months and not more than 59 months.

(4) One hundred eighty dollars (\$180) per calendar month if his or her qualified service is 60 months or more.

(b) Any member disabled as defined in this section for a period of more than 24 calendar months shall be eligible for retirement benefits under this article if he or she meets the requirements of Section 36-21-189.

(c) The account of any member not meeting the requirements of Section 36-21-189, who does not return to work after having drawn disability benefits for 24 consecutive months, shall be placed in an inactive status, not to exceed 36 months, with no further benefits or privileges. If the member returns to fire fighting as a firefighter within the 36 months and pays the dues required, all of his or her creditable service shall be restored prior to the date of disability. If the member does not return to fire fighting within the 36 months, his or her account shall be closed with no further rights or benefits.

(d) Any member whose account is so closed who later applies for membership in the fund shall lose credit for all prior qualified service up to the time his or her account is closed and, upon approval of a new application, shall become a new member in the fund.

*(Act 2010-726, p. 1818, §11.)*

#### **Section 36-21-191**

##### **Death benefits.**

(a) Each member shall be issued a certificate by the board in which the board agrees to pay to a beneficiary designated by such member, upon death while an active member, and to be conditioned upon the satisfaction of all obligations of the member to the fund, a lump sum amount of two thousand five hundred dollars (\$2,500).

(b) If any member is killed in the line of duty, his or her beneficiary or estate shall be paid all membership fees paid by the member. Such repayment of membership fees shall be in addition to the death benefit provided in this section. The board shall pay to the beneficiary of a member, upon death while an active member, a refund pursuant to Section 36-21-190.

*(Act 2010-726, p. 1818, §12.)*

#### **Section 36-21-192**

##### **Appointment of actuary; action upon report; liability for deficiency in payments.**

(a) The board shall appoint and employ an actuary to make an actuarial valuation every three years or earlier, if deemed required, of the receipts and income accruing to the fund based on age, expected mortality, disability, and retirement status of the members and the qualified service and membership service of members and to determine what percentage of the proposed payments, annuities, and benefits set forth in this article may be paid if the fund is to be kept on an actuarially sound and solvent basis. Upon receipt of the report of the actuary, the executive director shall present it to a meeting of the board which shall make adjustments of annuities and benefits, up or down, as recommended by the actuary. Any increase or reduction in benefits resulting from any actuarial study or from any subsequent amendment of this article shall be applicable to all persons then receiving such benefits, even though such persons had theretofore received benefits at a different rate.

(b) In no event shall the board, the fund, the association, the order, or any member, officer, director, or employee of any thereof or the state or any subdivision thereof or any municipality therein be liable to any member or any beneficiary or any representative of any member or any beneficiary of the fund for any deficiency in payments made pursuant to this article and pursuant to any pro rata reduction of annuities or benefits.

*(Act 2010-726, p. 1818, §13.)*

#### **Section 36-21-193**

##### **Withdrawal from fund.**

Any member shall be entitled at any time to withdraw from the fund and, upon application for such withdrawal on forms supplied by the board and approved by it, shall be entitled to receive 90 percent of all amounts previously paid to the fund by such member. Any member who withdraws and receives such refund shall not thereafter have any rights with respect to the fund and may not thereafter be entitled to become a member except as a new member. Any member who ceases to be a firefighter may elect not to receive any such refund for a period of not more than 36 months. If within the 36-month period the person shall again become a firefighter, he or she may be reinstated as a member without loss of accumulated qualified service. If a member does not return to service at the end of the 36-months period, then his or her account shall be terminated and his or her fees shall be returned, thereby cancelling all his or her qualified service.

*(Act 2010-726, p. 1818, §14.)*

#### **Section 36-21-194**

##### **Semiannual report of executive director; annual audit.**

(a) The executive director shall make semiannual reports to the board showing the total amount of money on hand at the time of such report, all investments then held by the board and itemizing by classifications all receipts and disbursements since the last such semiannual report.

(b) The Chief Examiner of the Department of Examiners of Public Accounts shall make an annual audit of the activities of the board for each fiscal year and make a complete report of the same to the Legislature. The annual audit shall cover all moneys received by the board and all expenditures made by the board during the period covered by the audit.

*(Act 2010-726, p. 1818, §15.)*

#### **Section 36-21-195**

##### **Effect of modifications; coverage for retired members upon return to active service.**

(a) All rights, annuities, and benefits provided herein shall be subject to future change by the Legislature, and subject to future changes or revisions as provided in this article, and no current or future member or beneficiary shall be deemed to have any vested right in the fund or to any annuity or benefit provided in this article. However, when the board has approved a member's application for a retirement annuity or benefit and the member has actually received benefits pursuant to the board's determination for a period of two years, then the board's determination as to the member's years of qualified service

shall be conclusive, and the board shall not thereafter arrive at a different determination except in the case of fraud or misrepresentation of any fact by the applicant.

(b) Any member who is receiving retirement benefits and returns to active fire fighting shall be covered under Section 36-21-189.

*(Act 2010-726, p. 1818, §16.)*

#### **Section 36-21-196**

##### **Assignment, garnishment attachment, etc., of benefits; payment of annuities and benefits.**

None of the moneys referred to in this article or any benefit or annuity payable under this article shall be assignable nor subject to attachment, garnishment, or judgment entered against any member or beneficiary. All payments of annuities and benefits shall be paid directly to the member or beneficiary.

*(Act 2010-726, p. 1818, §17.)*

#### **Section 36-21-197**

##### **Application.**

(a) The annuities and benefits provided for in this article shall not repeal or be considered to be in substitution for any other annuity or benefit provided for by law or any other retirement system, whether municipal, county, state, or federal.

(b) Participation by a firefighter in any other program, plan, fund, or system shall not bar participation by such firefighter in the fund.

*(Act 2010-726, p. 1818, §18.)*

#### **Section 36-27-59**

##### **Award of hazardous duty time; purchase of credit under Employees' or Teachers' Retirement System.**

(a) When used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) **CORRECTIONAL OFFICER.** A full-time correctional officer who is certified as a correctional officer by the Alabama Peace Officers' Standards and Training Commission.

(2) **FIREFIGHTER.** A full-time firefighter employed with the State of Alabama, a municipal fire department, or a fire district who has a level one minimum standard certification by the Firefighters Personnel Standards and Education Commission, or a firefighter employed by the Alabama Forestry Commission who has been certified by the State Forester as having met the wild land firefighter training standard of the National Wildfire Coordinating Group.

(3) **LAW ENFORCEMENT OFFICER.** A full-time law enforcement officer, not covered as a state policeman, employed with any state agency, department, board, commission, or institution or a full-time law enforcement officer employed by a local unit of the Employees' Retirement System under Section 36-27-6 who is certified as a law enforcement officer by the Alabama Peace Officers' Standards and Training Commission.

(b)(1) Any firefighter, law enforcement officer, or correctional officer covered under the Employees' Retirement System or the Teachers' Retirement System as a Tier I plan member, upon attainment of the requisite years of creditable service or who otherwise qualifies for service or disability retirement, shall be awarded one year of hazardous duty time for every five years of service as a firefighter, a law enforcement officer, or a correctional officer provided that the person has made the additional contribution provided in subdivision (2) or paid the additional contribution required in subsection (c) for each year of service used in determining hazardous duty time for the person. Proportional credit shall be awarded for any period of service less than five years.

(2) Effective January 1, 2001, and each pay period thereafter, each active employee who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), shall contribute to the Teachers' or Employees' Retirement System of Alabama six percent of his or her earnable compensation. For all pay dates beginning on or after October 1, 2011, each active employee who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), except those employees participating pursuant to Section 36-27-6, shall contribute to the Teachers' or Employees' Retirement System of Alabama eight and one-quarter percent (8.25%) of his or her earnable compensation. For all pay dates beginning on or after October 1, 2012, each active employee who is a Tier I plan member and who is a firefighter, law enforcement officer, or correctional officer, as defined in subsection (a), except those employees participating pursuant to Section 36-27-6, shall contribute to the Teachers' or Employees' Retirement System of Alabama eight and one-half percent (8.5%) of his or her earnable compensation. Any employer participating under Section 36-27-6, by adoption of a resolution, may elect for the increases in employee contributions provided by Act 2011-676 to be withheld from the earnable compensation of employees of the employer.

(c) Any member of the Employees' Retirement System or the Teachers' Retirement System eligible under subsection (b) may receive credit for his or her eligible prior service provided the member pays to the Secretary-Treasurer of the Employees' Retirement System or the Secretary-Treasurer of the Teachers' Retirement System one percent of his or her current annual earnable compensation or previous year's annual earnable compensation, whichever is higher, for each year of claimed credit within two years of January 1, 2001, except that any firefighter employed by the Alabama Forestry Commission shall make such payment within two years of December 28, 2001. Any member participating in the Employees' Retirement System under Section 36-27-6, who has eligible prior service under this section and who also had no prior eligibility to purchase prior service credit under this subsection, may purchase prior service credit under this section at the same rate provided in subsection (b) within one year of the effective date of his or her enrollment with the Employees' Retirement System or within one year of August 1, 2004. The member may purchase his or her claimed credit in increments of five years, unless

the total service credit is less than five years, in which case the service shall be purchased in its entirety. The member shall provide certification from each employing agency, on forms prescribed by the Teachers' or Employees' Retirement System, of each year of claimed service, as a prerequisite to payment under this section.

(d) The provisions of this section shall not apply to any Tier II plan member.

*(Act 2000-669, p. 1335, §§1-3; Act 2001-1101, 4th Sp. Sess., p. 1162, §1; Act 2004-637, p. 1459, §1; Act 2011-676, p. 1805, §1; Act 2012-377, p. 944, §1.)*

### **Section 36-30-1**

#### **Definitions; dependents; persons eligible for compensation.**

(a) For the purposes of this chapter, the following words and phrases shall have the following meanings:

(1) AWARDING AUTHORITY. The State Board of Adjustment, created and existing pursuant to Article 4, Chapter 9 of Title 41.

(2) COMPENSATION. The money benefits paid on account of injury or death which occurred during the course of employment or activity as a peace officer or firefighter and is in the nature of workers' compensation.

(3) DEPENDENT CHILD. An unmarried child under the age of 18 years, or one over the age of 18 who is physically or mentally incapacitated from earning.

(4) DIRECT AND PROXIMATE RESULT OF A HEART ATTACK OR STROKE. Death resulting from a heart attack or stroke caused by engaging or participating in a situation while on duty involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical service, prison security, disaster relief, other emergency medical response activity, or participation in a training exercise which involved nonroutine stressful or strenuous physical activity; and the heart attack or stroke is suffered while still on that duty after so engaging or participating or not more than 24 hours after so engaging or participating.

(5) FIREFIGHTER or FIREFIGHTERS. A member or members of a paid or volunteer fire department of a city, town, county, or other subdivision of the state or of a public corporation organized for the purpose of providing water, water systems, fire protection services, or fire protection facilities in the state; and shall include the chief, assistant chief, wardens, engineers, captains, firefighters, and all other officers and employees of such departments who actually engage in fire fighting or in rendering first aid in case of drownings or asphyxiation at the scene of action.

(6) PEACE OFFICER. All sheriffs, deputy sheriffs, constables, municipal police officers, municipal policemen, state and town marshals, members of the highway patrol, state troopers, Alcoholic Beverage Control Board Enforcement Division agents, enforcement officers of the Public Service Commission, revenue agents, and persons who are required by law to comply with the provisions of the Peace Officers' Minimum Standards, employees of the Board of Corrections, highway camp guards, law



enforcement officers of the Department of Conservation and Natural Resources, all law enforcement officers of the Alabama Forestry Commission, livestock theft investigators of the Department of Agriculture and Industries, Capitol security guards, narcotic agents and inspectors of the State Board of Health, any other state, county, or municipal officer engaged in quelling a riot, or civil disturbance, and university police officers.

(b) For the purposes of this chapter, the following described persons shall be conclusively presumed to be wholly dependent:

(1) Spouse, unless it be shown that the spouse was voluntarily living apart from the peace officer or firefighter at the time of death, or unless it be shown that the peace officer or firefighter was not in any way contributing to the spouse's support and had not in any way contributed to the spouse's support for more than 12 months next preceding the occurrence of the injury causing death.

(2) Minor children under the age of 18 years and those over 18 if physically and mentally incapacitated from earning.

(3) Spouse, child, mother, father, grandmother, grandfather, sister, brother, mother-in-law, and father-in-law who were wholly supported by a deceased peace officer or firefighter at the time of his or her death and for a reasonable period of time prior thereto shall be considered his or her dependents and payment of compensation may be made to them as hereinafter authorized.

(c) If a paid or volunteer firefighter, peace officer, certified police officer, or reserve law enforcement officer is killed while engaged in the performance of his or her duties and there are no designated beneficiaries, then the compensation shall be paid to his or her dependents or partial dependents in the manner prescribed by Section 36-30-3, and if there are none, the compensation shall be paid to his or her non-dependent children, and if there are none, the compensation shall be paid to his or her parents, and if there are none, the compensation shall be paid to the estate of the deceased.

(d) Any member of the class named in subdivision (3) of subsection (b) who regularly derived part of his or her support from the earnings of the deceased peace officer or the deceased firefighter, as the case may be, at the time of his or her death and for a reasonable time immediately prior thereto shall be considered his or her partial dependent and payment of compensation may be made to such partial dependent as hereinafter authorized.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §1; Acts 1967, No. 731, p. 1566, §1; Acts 1969, No. 1130, p. 2094, §1; Acts 1975, No. 1234, p. 2595, §1; Acts 1989, No. 89-742, p. 1471, §1; Acts 1991, No. 91-682, p. 1327, §1; Acts 1995, No. 95-559, p. 1168, §1; Act 2000-761, p. 1742, §1; Act 2002-519, p. 1346, §1; Act 2003-394, §1; Act 2006-426, p. 1054, §1; Act 2008-480, p. 1047, §2.)*

#### **Section 36-30-2**

#### **Deaths deemed compensable; compensation for total disability; amount of compensation.**

(a) In the event a peace officer, or a firefighter, or a volunteer firefighter, who is a member of an organized volunteer fire department registered with the Alabama Forestry Commission, is killed, either

accidentally or deliberately, or dies as a result of injuries received while engaged in the performance of his or her duties, or dies as a direct and proximate result of a heart attack or stroke, his or her beneficiaries or dependents shall be entitled to compensation in the amount of one hundred thousand dollars (\$100,000) to be paid from the State Treasury as provided in Section 36-30-3, unless such death was caused by the willful misconduct of the officer or was due to his or her own intoxication or his or her willful failure or refusal to use safety appliances provided by his or her employer or his or her willful refusal or neglect to perform a statutory duty or any other willful violation of a law or his or her willful breach of a reasonable rule or regulation governing the performance of his or her duties or his or her employment of which rule or regulation he or she had knowledge. Any peace officer, or any firefighter, or volunteer firefighter whose death results proximately from an injury received while performing his or her duties shall, for the purposes of this article, be deemed to have been killed while in the performance of such duties. If the State Health Officer determines from all available evidence that a volunteer firefighter, who is a member of an organized volunteer fire department registered with the Alabama Forestry Commission, has become totally disabled as a result of any injury received while engaged in the performance of his or her fire-fighting duties and the disability is likely to continue for more than 12 months from the date the injury is incurred, then the firefighter shall be entitled to receive disability compensation in the amount of one hundred thousand dollars (\$100,000) to be paid from the State Treasury as provided in Section 36-30-3. The term total disability shall be interpreted to mean that the injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained. The State Health Officer may seek the assistance of any state agency in making the determination of disability and the state agencies shall cooperate with the State Health Officer in such regard. The State Health Officer shall render a decision within 30 days of the time a claim is filed. If such volunteer firefighter disagrees with any officer, he or she may appeal the determination to the State Board of Adjustment in accordance with such board's procedures for such appeals.

(b) Beginning in calendar year 2009, the compensation amounts payable under this section shall be adjusted on January 1 of each year to reflect any increase during the preceding calendar year in the consumer price index as published by the U.S. Department of Labor, Bureau of Labor Statistics. The adjustment shall equal the percentage change in the consumer price index during the preceding calendar year.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §2; Acts 1980, No. 80-571, p. 884, §1; Acts 1984, No. 84-659, p. 1322, §1; Acts 1986, No. 86-524, p. 1015, §1; Acts 1989, No. 89-919, p. 1822, §1; Act 2006-426, p. 1054, §1; Act 2006-429, p. 1060, §1; Act 2008-480, p. 1047, §2; Act 2010-709, p. 1730, §1.)*

### **Section 36-30-3**

#### **Payment of compensation - Generally.**

The compensation payable to surviving beneficiaries or dependents of peace officers and firemen who are killed under the circumstances prescribed in Section 36-30-2 shall be paid to the beneficiaries designated by those peace officers or firefighters. If no beneficiaries have been designated, or if none remain, the compensation shall be paid to the persons entitled thereto without administration or to a guardian or such other person as the awarding authority may direct for the use of the persons entitled thereto, as follows:

(1) If the deceased peace officer or firefighter leaves a dependent spouse and no other dependents or partial dependents, the total amount of the compensation provided for in Section 36-30-2 shall be paid to the surviving spouse.

(2) If the deceased peace officer or firefighter leaves a dependent spouse and a dependent child or dependent children and no other dependents or partial dependents, then the total amount of the compensation provided for in Section 36-30-2 shall be paid to such surviving spouse for the benefit of herself or himself and such child or children, or, in its discretion, the awarding authority may determine what portion of the compensation shall be applied for the benefit of such child or children and may order the same paid to a guardian and then order only the remainder of such compensation paid to the surviving spouse.

(3) If the deceased peace officer or firefighter leaves a dependent child or children and no dependent spouse or other dependents or partial dependents, then such child or children shall be entitled to the total amount of the compensation authorized in Section 36-30-2, and such compensation shall be paid to a duly appointed guardian of such child or children or, in the discretion of the awarding authority, such sum may be paid to the probate judge of the county of residence of the child or children. Any probate judge who receives any moneys due any child or children under this article shall handle and administer all such funds in the manner prescribed in Sections 26-7-2 through 26-7-5.

(4) If the deceased peace officer or firefighter leaves no dependent spouse or dependent child or children but leaves other dependents or partial dependents, then such dependents and partial dependents jointly shall be entitled to the total amount of the compensation provided in Section 36-30-2, and subject to the limitations prescribed hereinbelow, such compensation shall be paid to them in the amounts and manner ordered by the awarding authority.

(5) If a deceased peace officer or firefighter leaves a dependent spouse and other dependents or partial dependents but no dependent child or children, then the surviving spouse and the other dependents and partial dependents jointly shall be entitled to the total compensation provided in Section 36-30-2; and, subject to the limitations prescribed hereinbelow, such compensation shall be paid to such dependents in the proportions and in the manner ordered by the awarding authority; provided, however, that at least 50 percent of such compensation must be awarded to the dependent surviving spouse.

(6) If a deceased peace officer or firefighter leaves a dependent spouse and a dependent child or children and other dependents and partial dependents, then the awarding authority shall determine what portion of such compensation shall be paid to the spouse and child or children and, in its discretion, may order all such compensation paid to such spouse and child or children, but must provide that at least 70 percent thereof is paid to them.

(7) If a deceased peace officer or firefighter leaves a dependent child or children and other dependents and partial dependents but no dependent spouse, then the awarding authority shall determine what portion of such compensation such child or children are entitled to receive and, in its discretion, may order all such compensation awarded to such child or children, but must award at least 60 percent thereof to such child or children.

(8) If a deceased peace officer or firefighter leaves no dependent spouse or child or children but leaves other dependents and partial dependents, the awarding authority shall determine what portion of such compensation each dependent and each partial dependent shall be entitled to receive, but such authority

may not award to a partial dependent a greater percent of such compensation than the percent of the deceased peace officer's or firefighter's average monthly income which was regularly contributed toward such partial dependent's support for a reasonable time immediately prior to the death of such officer or firefighter. In its discretion the awarding authority may award all of the compensation provided for in Section 36-30-2 to such total dependents of the deceased officer or firefighter to the exclusion of partial dependents.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §3; Act 2008-480, p. 1047, §2.)*

#### **Section 36-30-4**

##### **Payment of compensation - Paid only to residents of United States.**

Compensation pursuant to this article for the death of a peace officer or a firefighter shall be paid only to his or her designated beneficiaries or dependents who at the time of such officer's or firefighter's death were actually residents of the United States.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §4; Act 2008-480, p. 1047, §2.)*

#### **Section 36-30-5**

##### **Presentation of claims for compensation; forms; rules of evidence and procedure.**

(a) All claims for compensation as provided in this article shall be presented to the awarding authority within two years from the date of the death of the peace officer or firefighter or the claims are forfeited. All such claims shall be presented in the form prescribed by the awarding authority, and proof of the facts and circumstances of the peace officer's or firefighter's death and, if necessary, the claimant's relationship to and dependence upon such peace officer or firefighter shall be made in the manner prescribed by the awarding authority.

(b) Notwithstanding the provisions of subsection (a), any person who was previously ineligible to claim the compensation provided in this article, but is now eligible to claim the compensation provided in this article because of the enactment of Act 2008-480, and who is making a claim based upon the death of a peace officer or firefighter who died on or after January 1, 2006, but prior to the enactment of Act 2008-480, shall be able to present his or her claim for compensation to the awarding authority within one year of the date of enactment of Act 2008-480 regardless of whether the claim was presented within one year from the date of the death of the peace officer or firefighter.

(c) The awarding authority is hereby authorized to prescribe such forms and adopt such rules of evidence and procedure as it deems necessary or proper, not inconsistent with the provisions of this article, for the proper determination of all claims for compensation under this article.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §5; Act 2008-480, p. 1047, §2; Act 2010-533, p. 893, §1.)*

#### **Section 36-30-6**

#### **Hearing and determination of claims by Board of Adjustment; entry of judgment and order for payment of compensation.**

The Board of Adjustment when serving as the awarding authority under this article shall hear and determine claims for compensation under this article in the same manner prescribed by law for the hearing and determination by such board of other claims against the state. If, when acting as the awarding authority, it determines that an applicant for compensation under this article is entitled thereto, it may adjudge and order that such compensation shall be paid out of the appropriation made by Acts 1966, Ex. Sess., No. 208, p. 256 to the Board of Adjustment for the purposes of this article and, if the funds in such appropriation have been exhausted, then out of any fund or funds appropriated to the Board of Adjustment for the purposes of Article 4, Chapter 9 of Title 41.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §6.)*

#### **Section 36-30-7**

#### **Construction of article; decision of awarding authority final.**

(a) This article shall not be construed to give any person a right of action against the State of Alabama in any court for the recovery of the compensation authorized by this article. This article shall not be construed to take away any right of action in any court under any other law for the recovery of damages for the death of a peace officer or a fireman; nor, in the event of the death of a peace officer or a fireman who was an employee of the State of Alabama at the time of the injury which proximately caused his death, shall this article be construed to take away the right or privilege of the surviving dependents of such peace officer or fireman to file a claim for damages with the State Board of Adjustment pursuant to any other law.

(b) The decision of the awarding authority shall be final and shall not be subject to appeal or review by any court.

*(Acts 1966, Ex. Sess., No. 208, p. 256, §7.)*

#### **Section 36-30-40**

#### **Definitions.**

As used in this article, the following terms shall have the following meanings:

(1) BENEFIT. Any monetary allowance payable by the state for a firefighter on account of his or her disability or to his or her dependents on account of his or her death, irrespective of whether the same is payable under a pension law of the state or under some other law of the state.

(2) DISABILITY. Disability to perform duties as a firefighter.

(3) FIREFIGHTER. A person employed as a firefighter by the state.

(4) FIREFIGHTER'S OCCUPATIONAL DISEASE. Any condition or impairment of health caused by any of the following:

a. Hypertension.

b. Heart disease.

c. Respiratory disease.

d. Cancer which manifests itself in a firefighter during the period in which the firefighter is in the service of the state, provided the firefighter demonstrates that he or she, while in the employ of the state, was exposed to a known carcinogen which is reasonably linked to the disabling cancer, and the cancer shall be presumed to arise out of and in the course of the firefighter's employment unless the state demonstrates by a preponderance of the evidence that the cancer was caused by some other means.

e. HIV which manifests itself in a firefighter during the period in which the firefighter is in the service of the state, provided the firefighter demonstrates by sufficient evidence that he or she was exposed to HIV while in the line and scope of his or her employment with the state.

f. Hepatitis which manifests itself in a firefighter during the period in which the firefighter is in the service of the state, provided the firefighter demonstrates that he or she was exposed to hepatitis while in the line and scope of his or her employment with the state.

*(Act 2012-559, p. 1643, §1.)*

#### **Section 36-30-41**

#### **Applicability; compensation for qualified firefighters; burden of proof.**

(a) This article shall apply to firefighters who, upon entering the service of the state as firefighters, have successfully passed a physical examination which failed to reveal any evidence of a firefighter's occupational disease and who have completed at least three years' service as firefighters. If a physical examination was not required at the time of entry into service, a firefighter who completes an exam by January 1, 2013, shall be deemed eligible for benefits under this section.

(b) If a firefighter who qualifies for benefits under Chapter 29A, or any other law, suffers disability as a result of a firefighter's occupational disease, his or her disability shall be compensable the same as any service-connected disability under any law which provides benefits for firefighters of the state injured in

the line of duty. If a firefighter who qualifies for benefits under this section dies as the result of a firefighter's occupational disease, his or her death shall be compensable to the same extent as the death of a firefighter killed in the line of duty, and the firefighter shall be considered to have been killed in the line of duty for purposes of Sections 36-30-1 to 36-30-7, inclusive.

(c) In the case of an occupational disease as defined in this article, the state must prove by a preponderance of the evidence that the condition was caused by some means other than the occupation to disqualify the firefighter from benefits.

*(Act 2012-559, p. 1643, §2.)*

### **Section 36-32-1**

#### **Definitions.**

For the purpose of this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates the contrary:

- (1) **ALABAMA FIRE COLLEGE.** The independent public institution of postsecondary education established by this chapter and operated under the general control and supervision of the Alabama Firefighters' Personnel Standards and Education Commission for the purposes of educating, training, and certifying firefighters and trainees in fire prevention and suppression, emergency medical services, and related fields. All assets owned by the Alabama Fire College and the Alabama Firefighters' Personnel Standards and Education Commission, upon passage of Act 2012-207, shall remain the property of the state and shall be titled in the name of the Alabama Firefighters' Personnel Standards and Education Commission.
- (2) **COMMISSION.** The Alabama Firefighters' Personnel Standards and Education Commission established by this chapter.
- (3) **COMMITTEE.** The Joint Legislative Oversight Committee of the Alabama Firefighters' Personnel Standards and Education Commission established by this chapter.
- (4) **FIRE-FIGHTING AGENCY.** Any agency charged with the responsibility of detecting, combating, and preventing damage to property and lives by fires, but excluding the Alabama State Forestry Commission.
- (5) **FIRE PROTECTION PERSONNEL and FIREFIGHTER.** Any person permanently employed in fire administration, fire prevention, fire suppression, fire education, arson investigation, and emergency medical services, but excluding employees of the Alabama State Forestry Commission.
- (6) **VOLUNTEER FIREFIGHTER.** Any person who is not permanently employed as fire protection personnel or firefighter but who otherwise engages in fire administration, fire prevention, fire suppression, fire education, arson investigation, and emergency medical services.



(7) TRAINEE. A firefighter who has not been certified by the commission as having met the minimum basic training as set forth by Section 36-32-7 and by the rules and regulations adopted by the commission.

(8) SCHOOL. Any school located within the State of Alabama whether privately or publicly owned which offers a course in fire protection training or related subjects and which has been approved by the commission.

(9) STATE. The State of Alabama.

*(Acts 1975, No. 863, p. 1701, §1; Acts 1979, No. 79-759, p. 1352, §1; Acts 1980, No. 80-809, p. 1669, §1; Acts 1988, No. 88-663, p. 1064, §1; Act 2012-207, p. 340, §1.)*

### **Section 36-32-2**

#### **Creation; composition; qualifications of members; appointment; terms of office; adoption of bylaws.**

(a) The Alabama Firefighters' Personnel Standards and Education Commission shall consist of seven members, each of whom shall be a qualified elector of the state who is over the age of 18 years. The Professional Firefighters Association of Alabama shall nominate one certified firefighter to serve for a term of four years; the Alabama Firefighter's Association shall nominate one certified firefighter to serve for a term of four years; the Alabama Association of Fire Chiefs shall nominate one certified firefighter to serve for a term of four years; the Alabama Association of Volunteer Fire Departments shall nominate one certified volunteer firefighter to serve for a term of four years; the State Fire Marshal or his or her designee shall serve as a member; the Lieutenant Governor shall nominate one member; and the Governor shall nominate one member of the commission. The members appointed by the Lieutenant Governor and the Governor shall each serve for terms of four years. Should a vacancy occur during the term of a commission member, the original nominating entity shall nominate a replacement to serve for the remainder of the term. Each nominee shall be confirmed by the Senate before the nominee becomes a member of the commission. No commissioner who is then serving on the commission or whose term has just expired shall be required to be reconfirmed for a new term, once nominated by the Professional Firefighters Association of Alabama, the Alabama Firefighters Association, the Alabama Association of Fire Chiefs, the Alabama Association of Volunteer Fire Departments, the Lieutenant Governor, or the Governor. Each member of the commission shall serve until his or her successor is confirmed by the Senate. If the Senate rejects the nominee, the nominating entity shall make a replacement nomination. The nominee of the Alabama Association of Fire Chiefs shall be appointed in 2013 at the expiration of the term of office of the designee of the Governor whose appointment ends in 2013. The nominee of the Alabama Association of Volunteer Fire Departments shall be appointed in 2014 at the expiration of the term of office of the designee of the Governor whose appointment ends in 2014. No commissioner may serve more than two consecutive terms. The members may adopt bylaws to govern the organization of the commission, its meetings, and activities; provided, that the bylaws shall not conflict with this chapter.

(b) The membership of the commission shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

**Section 36-32-3**

**Officers; powers and duties; compensation; expenditures and revenues; education and training; facilities.**

(a) The commission shall elect a chairman and a vice-chairman from among its members at the first regular quarterly meeting of the calendar year.

(b) The commission may do all of the following:

(1) Organize the Alabama Fire College by appointing an executive director, assistant directors, and such officers as the interest of the Alabama Fire College may require.

(2) Remove the executive director or any assistant or other officer.

(3) Fix, increase, or reduce the compensation of the executive director or any assistant or other officer.

(4) Institute, regulate, alter, or modify the government of the Alabama Fire College as the commission may deem advisable.

(5) Prescribe courses of instruction related to the mission of the Alabama Fire College.

(6) Establish the cost of any prescribed course of study related to the mission of the Alabama Fire College.

(7) Confer certifications as are usually conferred by similar institutions related to the mission of the Alabama Fire College.

(c) The commission may delegate to the executive director such powers and functions in the administration of the affairs of the fire college as the commission may deem proper, including the hiring, firing, dismissal, nonrenewal, discipline, promotion, and supervision of any employee of the Alabama Fire College and of the commission. The commission may direct the executive director to coordinate the certification of any person regulated by the commission, to conduct investigations and fulfill other duties as provided in Section 36-32-5, and to provide any technical assistance programs. The commission shall set the salaries of the faculty, administrative personnel, and support staff subject to the salary schedule adopted by the commission. The salary schedule adopted by the commission shall be identical to the salary schedule adopted by the State Board of Education for employees of state community and technical colleges. The State Board of Education may not be held liable for the failure of the commission to adopt such salary schedule. Employees of the commission shall participate in the Teachers' Retirement System of Alabama, subject to all rules, regulations, and conditions thereof and shall be considered employees as defined in subdivision (1) of Section 16-25A-1. In the event an employee of the commission is receiving a monthly benefit from the Teachers' Retirement System by virtue of his or her retirement from employment with the commission, he or she shall be considered a

retired employee as defined in subdivision (2) of Section 16-25A-1, allowing participation in the Public Education Employees' Health Insurance Plan, as established in Chapter 25A of Title 16.

(d) Members of the commission shall receive fifty dollars (\$50) per diem for attending meetings of the commission, plus travel expenses as provided for by state travel law, provided funds are available.

(e) The commission, the Department of Postsecondary Education, and any institution of postsecondary education may contract with the commission for the provision of services to students or for the fulfillment of the educational mission of the Alabama Fire College. The commission shall report annually to independent auditors employed by the commission all expenditures and revenues. The independent auditor shall be secured by the commission through a competitive bid process. In addition to an independent audit, the commission shall also report annually to the Chief Examiner all expenditures and revenues. The commission shall be audited by the Department of Examiners of Public Accounts in accordance with Section 41-5-14. The findings of both audits shall be reported to and reviewed by the Joint Legislative Oversight Committee of the Alabama Firefighters' Personnel Standards and Education Commission.

(f) Nothing in this chapter shall be construed to alter, amend, modify, repeal, or affect in any way the provisions in Chapter 18 of Title 22 or to prohibit or limit in any way the authority of the Alabama Department of Public Health to establish standards for the training, qualification, scope of privilege, certification, licensing of emergency medical services personnel and for the operation, design, equipment and licensing of ambulances, and ambulance service operators. The commission may authorize the Alabama Fire College to provide education and training to firefighters and trainees in emergency medical services, but only in a manner that complies with Chapter 18 of Title 22 and the rules of the State Board of Health.

(g) The commission may not move its facilities unless authorized by an act of the Alabama Legislature.

*(Acts 1975, No. 863, p. 1701, §3; Acts 1978, No. 778, p. 1140, §1; Acts 1980, No. 80-809, p. 1669, §1; Acts 1988, No. 88-663, p. 1064, §3; Act 2012-207, p. 340, §1.)*

#### **Section 36-32-4**

#### **Meetings; seal; quorum.**

The commission shall meet in regular session quarterly at a time and place in the State of Alabama to be designated in its bylaws. Special meetings may be called by the chairman, the vice-chairman or any three members by giving notice of the time, place and purpose of such special meeting at least five days before it is to be held, to each member of the commission. Such notice may be waived by all members of the commission, either before or after a special meeting. The commission shall adopt an official seal and the executive director shall be custodian of the seal and shall have authority to affix the seal to agreements and obligations of the commission. A quorum shall be a majority of the commission members. The Governor shall summon the commission to its first meeting.

*(Acts 1975, No. 863, p. 1701, §4; Acts 1978, No. 778, p. 1140, §1; Acts 1980, No. 80-809, p. 1669, §1.)*

## **Section 36-32-5**

### **Functions and duties.**

The commission shall have the following functions and duties together with all powers necessary or convenient for the performance thereof:

- (1) To study, obtain data, statistics, and information and make reports concerning the recruitment, selection, and training of fire-protection personnel in the state; to make recommendations for improvement in methods of recruitment, selection, and training of such personnel.
- (2) To recommend minimum curriculum requirements for schools operated for the specific purpose of training firefighter recruits or fire-protection personnel.
- (3) To consider, hold public hearings on, adopt, and promulgate such standards relating to trainees as fire-protection personnel as set forth by the commission.
- (4) To consult and coordinate through memorandum of agreement or understanding when applicable with any fire-fighting agency, university, college, community college, the federal government or any branch thereof, or other educational institution concerning the provision of or development anywhere of, or both, firefighter training schools and programs of courses of instruction, including, but not limited to, education and training in the areas of fire science, fire technology, fire administration, and all allied and supporting fields, including travel out of the State of Alabama, for business, administrative, and instruction purposes which shall be authorized only by the commission and shall be allowed under the same conditions as for state officers and employees pursuant to Section 36-7-21.
- (5) To encourage the establishment of fire-fighting training schools and courses on fire fighting in the educational institutions in the state.
- (6) To gather statistics and data and make reports concerning the training of fire-protection personnel and their accomplishments.
- (7) To certify fire-fighting training and education programs as having attained the minimum required standards prescribed by such commission.
- (8) To certify fire-protection personnel in respect to their competence to perform fire service duties at various defined levels of responsibility as prescribed by such commission.
- (9) To direct research in the field of fire fighting and prevention and to accept gifts and grants for such purposes.
- (10) To consult with national fire service organizations or agencies concerning the training and certification of fire-protection personnel in the state.
- (11) To establish and utilize testing procedures and levels of grading which are consistently uniform with the standard prescribed by such commission.

(12) To make investigation to determine whether the requirements of this chapter and the rules, regulations, and standards of the commission issued pursuant to this chapter are being observed and followed.

(13) To recommend to the Attorney General, the district attorneys and other appropriate officials measures for the enforcement of the requirements of this chapter and the rules, regulations, and standards issued by the commission pursuant to this chapter.

(14) To enter into cooperative agreements with state and local fire-fighting agencies for the effective coordination of fire-fighting training in the state.

(15) To obtain the services and advice of experts in the field of fire-fighting for the purpose of aiding the commission in its studies, consideration, reports and recommendations, and the adoption of standards, rules, and regulations.

(16) To promote the participation of local fire-fighting agencies in the programs established by the commission.

*(Acts 1975, No. 863, p. 1701, §5; Acts 1979, No. 79-759, p. 1352, §2; Acts 1980, No. 80-809, p. 1669, §1; Act 2012-207, p. 340, §1.)*

#### **Section 36-32-6**

#### **Approval of regulations; regulations and bylaws to be kept current; public inspection of regulations and bylaws.**

Regulations proposed by the commission shall, before becoming effective, be distributed to each fire-fighting agency, the Professional Firefighters' Association of Alabama, the Alabama Association of Fire Chiefs, the Alabama Firemen's Association, and such other organizations of fire-fighting personnel as may be formed or organized from time to time. Such agencies and organizations shall be given a period of at least 45 days to comment upon such regulations before their final adoption by the commission. All bylaws of the commission and its regulations shall be kept current and shall be available to the public at all times.

*(Acts 1975, No. 863, p. 1701, §6; Acts 1980, No. 80-809, p. 1669, §1.)*

#### **Section 36-32-7**

#### **Minimum standards for firefighters.**

(a) Applicability. The minimum standards provided in this section shall apply to trainees who are to be employed as fire-protection personnel by a public fire fighting agency. No city or fire fighting agency which provides fire protection to the public shall permanently employ any trainee as fire-protection personnel who has not met the requirements of this section. Provided, however, no fire prevention

inspector, fire protection engineer, public fire and life safety educator, public safety dispatcher, or person whose duties are solely clerical or secretarial in nature employed as fire-protection personnel by the fire fighting agency of any Class 1 municipality shall be required to meet the minimum physical requirements as a trainee for firefighter as prescribed by the commission.

(b) Employment and qualifications. The trainee shall be certified by a licensed practicing physician as satisfactory by the appointing authority designated as in good health and physically fit for the performance of his duties as a firefighter and shall meet the employment qualifications of the appointing authority.

(c) Training.

(1) FIRE-PROTECTION PERSONNEL. Prior to permanent employment, or a period not exceeding 12 months after the date of employment, the trainee shall have met the requirements for certification as prescribed by the commission. Training shall be given by an instructor certified by the Alabama Firefighters' Personnel Standards and Education Commission and the training may be administered within the department in which the applicant seeks to serve, if the department meets the requirements of the commission for a training center. Upon the completion of training, the commission shall administer a comprehensive written test to each applicant; and each applicant must pass the test as a condition of completion of such training.

(2) VOLUNTEER FIREFIGHTER. A volunteer firefighter may be certified by the commission as a volunteer firefighter if the volunteer firefighter shall have met the training requirements prescribed by the commission. Provided, the training is conducted by an instructor certified by and in facilities approved by the commission. The training need not be during continuous sessions but may be scheduled at different intervals during a period not exceeding 24 months for a total of 160 hours. This subdivision shall not be construed as to mandate training for volunteer firefighters, except for purposes of certification.

*(Acts 1975, No. 863, p. 1701, §7; Acts 1977, No. 700, p. 1238, §1; Acts 1978, No. 778, p. 1140, §1; Acts 1979, No. 79-759, p. 1352, §3; Acts 1980, No. 80-809, p. 1669, §1; Act 2006-594, p. 1623, §2.)*

#### **Section 36-32-8**

#### **Penalty for employing firefighter failing to meet standards.**

Any person who shall permanently employ any trainee who, to the knowledge of the employer, fails to meet the minimum standards provided in Section 36-32-7 or the standards, rules and regulations issued by the commission under this chapter, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.00.

*(Acts 1975, No. 863, p. 1701, §8; Acts 1980, No. 80-809, p. 1669, §1.)*

#### **Section 36-32-9**

## **Fund - Creation; acceptance and disposition of grants and appropriations.**

There is hereby established and created in the Treasury of the state the Alabama Firefighters' Personnel Standards and Education Fund.

The commission may accept grants from the federal government, its departments and agencies as well as grants and appropriations by the state, any county or municipality or any individual, corporation or fund. All grants and appropriations to the state for work within the functions and duties of the commission and all grants and appropriations to the commission shall be paid into the fund.

*(Acts 1975, No. 863, p. 1701, §9.)*

### **Section 36-32-10**

## **Fund - Municipalities and counties authorized to make appropriations and grants.**

The governing body of each incorporated city or town and the governing body of each county of the state is hereby authorized to appropriate any funds not otherwise appropriated to or for the benefit of the commission and its work. All such appropriations shall be paid into the fund.

*(Acts 1975, No. 863, p. 1701, §10.)*

### **Section 36-32-11**

## **Fire-fighting agencies authorized to make mutual assistance agreements.**

Each fire-fighting agency in the state is hereby authorized to make agreements and arrangements for cooperation and mutual assistance in fire-fighting training, with the commission and with each other.

*(Acts 1975, No. 863, p. 1701, §11; Acts 1980, No. 80-809, p. 1669, §1.)*

### **Section 36-32-12**

## **Powers and duties of municipal governments.**

Except as expressly provided in this chapter, nothing contained in this chapter shall be deemed to limit the powers, rights, duties and responsibilities of municipal governments, nor to affect other laws now in effect.

*(Acts 1975, No. 863, p. 1701, §12.)*



### **Section 36-32-13**

#### **Joint Legislative Oversight Committee; transfer of certain employees to State Merit System; membership of commission.**

(a) There is created the Joint Legislative Oversight Committee of the Alabama Firefighters' Personnel Standards and Education Commission. The committee shall be composed of three members of each house. The senator and the representative from the districts where the Alabama Fire College is located shall be members of the committee. The remaining members shall be appointed by the Speaker of the House and the President Pro Tempore of the Senate. The chair and vice chair of the oversight committee shall be elected at the first meeting by the members of the oversight committee. The oversight committee shall meet as it deems necessary and shall study and oversee all facets of the Alabama Firefighters' Personnel Standards and Education Commission. The committee shall review each report provided by the commission and may make recommendations as it deems appropriate.

(b) Upon the request of the chair, the Secretary of the Senate and the Clerk of the House of Representatives shall provide the clerical assistance necessary for the work of the oversight committee.

(c) Each member of the oversight committee shall be entitled to his or her regular legislative compensation, his or her per diem, and travel expenses for each day he or she attends a meeting of the oversight committee which shall be paid out of any funds appropriated to the use of the Legislature, upon warrants drawn on the state Comptroller upon requisitions signed by the chair of the oversight committee. Notwithstanding the foregoing, no member shall receive additional legislative compensation or per diem when the Legislature is in session or if a member is being paid any other payments on the same dates for attendance of other state business.

(d) Other than the executive director or any assistant or other officer, all persons employed by the Alabama Fire College on April 17, 2012, shall be automatically transferred to the State Merit System as exempt employees with no adverse effect as to salary or benefits. All transferred employees shall be entitled to all due process protections as classified Merit System employees regarding termination, including, but not limited to, an appeal to the Alabama State Personnel Board.

(e) The membership of the commission shall be inclusive and shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

*(Act 2012-207, p. 340, §2.)*

### **Section 40-9-13**

#### **Volunteer fire departments, Alabama Society of D.A.R., Annual Shrine Circus, Episcopal Foundation of Jefferson County, Alabama Heart Association and Presbyterian Apartments, Inc.**

(a) All volunteer fire departments in this state, and all real and personal property of all volunteer fire departments in this state, the Alabama Society of the Daughters of the American Revolution, and all real and personal property of the Alabama Society of the Daughters of the American Revolution, the Annual Shrine Circus as well as all other charitable Shrine amusement and fund raising events, and all real and

personal property of the Annual Shrine Circus, the Episcopal Foundation of Jefferson County, and all real and personal property of the Episcopal Foundation of Jefferson County, the Alabama Heart Association and all real and personal property of the Alabama Heart Association, and the Presbyterian Apartments, Incorporated, and all real and personal property of the Presbyterian Apartments, Incorporated, when such real and personal property shall be used as provided in Section 40-9-12, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof.

(b) All volunteer fire departments in this state, the Alabama Society of the Daughters of the American Revolution, the Annual Shrine Circus as well as all other charitable Shrine amusement and fund raising events, the Episcopal Foundation of Jefferson County, the Alabama Heart Association and the Presbyterian Apartments, Incorporated, shall be subject to all the provisions of Section 40-9-12, as are all other organizations named therein.

*(Acts 1973, No. 1204, p. 2026; Acts 1984, 1st Ex. Sess., No. 84-739, p. 80.)*

#### **Section 40-9-35**

##### **Alabama Association of Rescue Squads.**

(a) Motor fuels used by vehicles of rescue squads who are members in good standing of the Alabama Association of Rescue Squads in Alabama shall be exempt from all state and local motor fuel taxes.

(b) Motor vehicles used by rescue squads who are members in good standing of the Alabama Association of Rescue Squads in Alabama shall be exempt from all tax and motor vehicle license fees.

*(Act 2009-660, p. 2028, §1.)*

#### **Section 40-9-36**

##### **Volunteer fire departments and fire protection districts.**

Vehicles owned and operated by volunteer fire departments and fire protection districts in Alabama shall be exempt from all state and local motor fuel taxes.

*(Act 2009-717, p. 2115, §1.)*

#### **Section 40-9-38**

**Alabama Association of Volunteer Fire Departments, Alabama Association of Rescue Squads, county volunteer fire and rescue associations, certain volunteer rescue squads, and certain local fire districts.**

The Alabama Association of Volunteer Fire Departments, county volunteer fire associations, the Alabama Association of Rescue Squads, Incorporated, all volunteer rescue squads that are members of the Alabama Association of Rescue Squads, all county volunteer rescue associations, and all local fire districts that are not under the auspices of their county commission are exempt from any state, county, and local sales and use taxes and ad valorem taxes.

*(Act 2012-544, p. 1613, §1.)*

**Section 40-12-244**

**License tags and registration fees - Exemption for members of armed forces, etc.**

There shall be exempt from the operation of the privilege or license tax and registration fee now or hereinafter to be levied on automobiles and motor vehicles by the State of Alabama one passenger vehicle owned by any of the following:

(1)a. An active member of the Alabama National Guard or the Alabama State Guard, when organized in lieu of the National Guard or for any service-connected disabled veteran. The exemption for only one vehicle extends only to distinctive National Guard or service-connected disabled veterans' license tags and shall be claimed upon presentation of proper identification on forms prescribed by the Adjutant General. Active members of the National Guard may obtain additional distinctive license tags for other passenger vehicles which they own by paying the regular privilege or license tax provided by law.

b. A retired member of the Alabama National Guard with 20 years or more service. The exemption for only one vehicle extends only to distinctive National Guard license tags and shall be claimed upon presentation of proper identification on forms prescribed by the Adjutant General. Retired members of the Alabama National Guard may obtain additional distinctive license tags for passenger vehicles which they own upon presentation and proper identification on forms prescribed by the Adjutant General and by paying the regular privilege or license tax and registration fee as provided by law.

(2) An officer, warrant officer, or enlisted person serving as an active member of any United States armed forces reserve organization or any service-connected disabled veterans who were residents of Alabama at the time of entering the service and who are still residents of Alabama at the time the exemption is claimed. The exemption shall be claimed by presentation of proper identification and proof of residence requirements on forms prescribed by the state Department of Revenue.

(3) A member of a volunteer rescue squad.

(4) The Civil Air Patrol; including those vehicles owned by the national headquarters and those owned by the Alabama wing of the Civil Air Patrol.

(5) A volunteer firefighter who is a resident of Alabama and who is entitled to the distinctive firefighter tag issued pursuant to Section 32-6-272. The exemption for one vehicle extends only to the firefighter distinctive license plate.

*(Acts 1975, No. 1237, p. 2603, §1; Acts 1975, 4th Ex. Sess., No. 80, p. 2725, §1; Acts 1977, No. 777, p. 1336, §6; Acts 1980, No. 80-695, p. 1398; Act 2000-754, p. 1709, §2; Act 2009-618, p. 1790, §1.)*

#### **Section 40-18-19**

#### **Exemptions - Generally.**

(a) The following exemptions from income taxation shall be allowed to every individual resident taxpayer:

(1) Retirement allowances, pensions and annuities, or optional allowances, approved by the Board of Control of the Teachers' Retirement System of Alabama, which exempt status is set out in Section 16-25-23.

(2) Retirement allowances, pensions and annuities or optional allowances, approved by the Board of Control of the Employees' Retirement System of Alabama, which exempt status is set out in Section 36-27-28.

(3) The first eight thousand dollars (\$8,000) of any retirement compensation, retirement allowances, pensions and annuities, or optional allowances, received by any eligible firefighter, as defined in Sections 36-32-1 and 36-32-2, or his or her designated beneficiary, from any firefighting agency established in the State of Alabama, but only if such retirement compensation, retirement allowances, pensions and annuities, or optional allowances as are awarded as a result of fire protection services rendered. This subdivision shall become effective for the taxable years beginning January 1, 1987, and thereafter following its passage and approval by the Governor, or upon its otherwise becoming a law; provided, that for the taxable years beginning on or after January 1, 1991, all of the pension and retirement payments shall be exempt from taxation.

(4) The first eight thousand dollars (\$8,000) of any retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible peace officer, as defined in subsection (11) of Section 36-21-60, or his or her designated beneficiary, from any police retirement system established in the State of Alabama, but only if the retirement compensation, retirement allowances, pensions and annuities, or optional allowances are awarded as a result of police services rendered. This subdivision shall become effective for taxable years beginning January 1, 1984, and thereafter; provided, that for the taxable years beginning on or after January 1, 1991, all of the pension and retirement payments shall be exempt from taxation.

(5) Income received as annuities under the United States Retirement System from the United States Government Civil Service Retirement and Disability Fund including income received from the Tennessee Valley Authority's pension system, income received as annuities under the United States Foreign Service Retirement and Disability Fund or income received from any other United States government retirement and disability fund.

(6) Beginning January 1, 1991, all payments made on or after such date to a retiree or his designated beneficiary under a "defined benefit plan," as defined under Section 414(j) of the Internal Revenue Code of 1986, as amended from time to time, to the extent such payment would be taxable for federal income tax purposes.

(7) Net income realized by individuals and partnerships from time to time in the business of conducting a financial business employing moneyed capital coming into competition with the business of national banks, but only if such individuals and partnerships are subject to an excise tax imposed by this state on or with respect to such income.

(8) In the case of a single person or a married person not living with husband or wife, a personal exemption of one thousand five hundred dollars (\$1,500) or, in the case of a head of a family or a married person living with husband or wife, a personal exemption of three thousand dollars (\$3,000), but a husband and wife living together shall receive only one personal exemption of three thousand dollars (\$3,000) against their aggregate income, and in case they make separate returns each must claim a personal exemption of one thousand five hundred dollars (\$1,500).

(9) a. Three hundred dollars (\$300) for each person, other than husband or wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.

b. For tax years beginning after December 31, 2006, for taxpayers with adjusted gross income equal to or less than \$20,000, one thousand dollars for each person other than husband or wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.

c. For tax years beginning after December 31, 2006, for taxpayers with adjusted gross income in excess of \$20,000 and equal to or less than \$100,000, five hundred dollars for each person other than husband and wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.

For the purposes of this section, "dependent" shall mean: a son or daughter of the taxpayer or a descendant of either; a stepson or stepdaughter of the taxpayer; a brother, sister, stepbrother, or stepsister of the taxpayer; the father or mother of the taxpayer or an ancestor of either; a stepfather or stepmother of the taxpayer; a son or daughter of a brother or sister of the taxpayer; a brother or sister of the father or mother of the taxpayer; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer. As used in this paragraph the terms "brother" and "sister" include a brother or sister by the half blood. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such a person by blood.

(10) Beginning January 1, 1998, all income, interest, dividends, gains, or benefits of any kind received from savings accounts or prepaid tuition contracts administered under Title 16, Chapter 33C, are exempt from all income taxation by the state and by all of its political subdivisions to the extent that the amounts remain on deposit in the PACT Trust Fund or the ACES Trust Fund, or are used to pay the designated beneficiary's qualified higher education expenses as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or are refunded under such terms as would not carry a penalty under Section 529 of the Internal Revenue Code of 1986, as amended.

(b) Of the following personal exemptions allowed resident taxpayers, each nonresident individual taxpayer shall be allowed that proportion thereof that the adjusted gross income received by said nonresident individual taxpayer from sources within the State of Alabama bears to his or her adjusted gross income received from sources within and without the State of Alabama: In the case of a single person or a married person not living with husband or wife, a personal exemption of one thousand five hundred (\$1,500) or, in the case of a head of a family or a married person living with husband or wife, a personal exemption of three thousand dollars (\$3,000), a husband and wife living together shall receive but one personal exemption of three thousand dollars (\$3,000) against their aggregate income; and, in case they make separate returns, each must claim a personal exemption of one thousand five hundred (\$1,500); and the amount in subdivision (9) of subsection (a) for each person, other than husband or wife, dependent upon and receiving his chief support from the taxpayer.

*(Acts 1935, No. 194, p. 256; Code 1940, T. 51, §388; Acts 1945, No. 39, p. 45; Acts 1947, No. 367, p. 254; Acts 1953, No. 693, p. 945; Acts 1959, No. 112, p. 634, §1; Acts 1965, No. 552, p. 1021, §1; Acts 1969, Ex. Sess., No. 20, p. 44, §1; Acts 1982, No. 82-441, p. 692, §1; Acts 1982, No. 82-465, p. 759, §4; Acts 1982, 1st Ex. Sess., No. 82-667, p. 85, §4; Acts 1987, No. 87-630, p. 1130; Acts 1990, No. 90-596, p. 1041, §1; Acts 1991, No. 91-480, p. 869, §1; Acts 1997, No. 97-547, p. 957, §2; Act 2006-62, p. 75, §1; Act 2006-352, p. 927, §1.)*

#### **Section 41-4-33.1**

**State-owned surplus property transferred to volunteer fire departments; determination by Forestry Commission; approval by department; penalty for unauthorized use; final disposition of property.**

(a) All surplus property owned by the state to be disposed of by sale at auction by the Finance Department shall first be screened by the Forestry Commission to determine if such property may be of use by volunteer fire departments for specific use in fire suppression activities. If the Forestry Commission finds such property to be useful for such purposes, then, with the approval of the state Finance Director, such property shall be transferred to the Forestry Commission. All such property shall be loaned to the volunteer fire departments.

(b) Any property transferred to a volunteer fire department under the provisions of this section shall be used exclusively for fire protection purposes. The use of any such property other than on the business of the volunteer fire department is expressly prohibited. Any violation of the provision of this section shall be a Class A misdemeanor punishable as provided under Title 13A.

(c) Final disposition of all properties loaned by the Forestry Commission as a result of this section shall rest with the Finance Department of the state.

*(Acts 1980, No. 80-364, p. 483.)*

#### **Section 41-4-33.2**

**Applicability of section; use of public funds, etc., by ambulance services, etc., authorized; penalty for unauthorized use; final disposition of property.**

(a) This section shall apply to voluntary nonprofit ambulance services and voluntary nonprofit rescue squads which are operated as a public service for the benefit of the citizens of this state. It is declared that said ambulance services and rescue squads are quasi-public entities that are entitled to receive and use public funds or property appropriated, donated or loaned to them by the state or any county or municipal governing body.

(b) All surplus property owned by the state to be disposed of by sale at auction by the Finance Department shall first be screened by the state Board of Health Ambulance Advisory Board created in Section 22-18-5, and the Alabama Association of Rescue Squads, Inc., to determine if such property may be of use by volunteer ambulance services or volunteer rescue squads respectively. If said entities find such property to be useful to voluntary ambulance services or rescue squads, then the state Finance Director shall loan said property to the voluntary services. The state Finance Director is authorized to promulgate necessary rules to implement this section.

(c) Any property transferred to a volunteer ambulance service or rescue squad under the provisions of this section shall be used exclusively for ambulance and rescue purposes. The use of any such property other than on the business of the volunteer ambulance service or rescue squad is expressly prohibited. Any violation of the provision of this section shall be a Class A misdemeanor punishable as provided under Title 13A.

Final disposition of all properties loaned as a result of this section shall rest with the Finance Department of the state.

*(Acts 1984, No. 84-619, p. 1257.)*