FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 1 & 130

93RD GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, February 3, 2005, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0220S.08C

AN ACT

To repeal sections 287.020, 287.040, 287.063, 287.067, 287.120, 287.128, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.270, 287.380, 287.390, 287.420, 287.510, 287.550, 287.715, 287.800, and 287.865, RSMo, and to enact in lieu thereof twenty-four new sections relating to workers' compensation, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 287.020, 287.040, 287.063, 287.067, 287.120, 287.128, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.270, 287.380, 287.390, 287.420, 287.510, 287.550, 287.715, 287.800, and 287.865, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 287.020, 287.040, 287.041, 287.042, 287.063, 287.067, 287.120, 287.128, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.270, 287.380, 287.390, 287.420, 287.510, 287.550, 287.715, 287.800, and 287.865, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner **as defined in subsection 43 of section 301.010, RSMo,** and operator of a motor vehicle which is leased or contracted with a driver to a for-hire **[**common or contract**]** motor **[**vehicle**]** carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the **[**motor carrier and railroad safety division of the department of economic development**] Missouri department of transportation** or by the **[**interstate commerce commission**] United States Department of Transportation, or any of its subagencies**.

2. The word "accident" as used in this chapter shall**[**, unless a different meaning is clearly indicated by the context, be construed to**]** mean an unexpected **[**or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault,**] traumatic event or unusual strain identifiable by time and place of occurrence** and producing at the time objective symptoms of an injury **caused by a specific event during a single work shift**. **[**An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability.**]** An injury is not compensable **[**merely**]** because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. **[**The injury must be incidental to and not independent of the relation of employer and employee.**] An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.** Ordinary, gradual deterioration or progressive degeneration of the body caused by aging **or by the normal activities of day-to-day living** shall not be compensable**[**, except where the deterioration or degeneration follows as an incident of employment**]**.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the **[**employment**] accident** is **[**a substantial**] the prevailing** factor in causing the injury; and

(b) **[**It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d)**]** It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

(3) **An injury resulting directly or indirectly from idiopathic causes is not compensable;**

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition;

(5) The terms "injury" and "personal injuries" shall **be demonstrated and certified by a physician using only medical evidence based on "objective relevant medical findings". "Objective relevant medical findings" are those findings which cannot come under the voluntary control of the patient. The terms "injury" and "personal injuries" shall** mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. **[**Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.**] Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling to or from work are not compensable. The "extension of**

premises" doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

6. **[**A person who is employed by the same employer for more than five and one-half consecutive work days shall for the purpose of this chapter be considered an "employee".

7.**]** The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

[8.**]** **7.** As used in this chapter and all acts amendatory thereof, the term "commission" shall hereafter be construed as meaning and referring exclusively to the labor and industrial relations commission of Missouri, and the term "director" shall hereafter be construed as meaning the director of the department of insurance of the state of Missouri or such agency of government as shall exercise the powers and duties now conferred and imposed upon the department of insurance of the state of Missouri.

[9.**]** **8.** The term "division" as used in this chapter means the division of workers' compensation of the department of labor and industrial relations of the state of Missouri.

[10.**]** **9.** For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section 287.250 shall control.

10. In applying provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999).

287.040. 1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or

about the premises of the employer while doing work which is in the usual course of his business.

2. [The provisions of this section shall apply to the relationship of landlord and tenant, and lessor or lessee, when created for the fraudulent purpose of avoiding liability, but not otherwise. In such cases the landlord or lessor shall be deemed the employer of the employees of the tenant or lessee.

3.] The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor but such independent contractor shall be deemed to be the employer of the employees of his subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.

[4.] **3.** In all cases mentioned in the preceding subsections, the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable, with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original proceedings. No such employer shall be liable as in this section provided, if the employee was insured by his immediate or any intermediate employer.

4. The provisions of this section shall not apply to the relationship between a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies, and an owner, as defined in subdivision (43) of section 301.010, RSMo, and operator of a motor vehicle.

287.041. Notwithstanding any provision of section 287.030 and 287.040, for purposes of this law, in no event shall a for-hire motor carrier operating within a commercial zone as defined in section 360.041, RSMo, or section 390.020, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or its subagencies, be determined to be the employer of a lessor, as defined at 49 C.F.R. Section 376.2(f), or of a

driver receiving renumeration from a lessor, as defined at 49 C.F.R. Section 376.2(f), provided, however, the term "for-hire motor carrier" shall in no event include an organization described in section 501 (c) (3) of the Internal Revenue Code or any governmental entity.

287.042. The changes to subsection 1 of section 287.020 are remedial and curative and should be given that construction.

287.063. 1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 7 of section 287.067, RSMo.

2. The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease **[**for which claim is made**] prior to evidence of disability,** regardless of the length of time of such last exposure **subject to the notice provision of section 287.420**.

3. The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that **[**a compensable**] an** injury has been sustained **related to such exposure**, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section 287.197.

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An **injury by** occupational disease is compensable **only** if **[**it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor**] the occupational exposure was the prevailing factor in causing both the**

resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. "Loss of hearing due to industrial noise" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of producing occupational deafness.

4. "Radiation disability" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances or to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the use of or direct contact with radium or radioactive properties or substances or the use of or direct exposure to Roentgen rays (X rays) or ionizing radiation.

5. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

6. Any employee who is exposed to and contracts any contagious or communicable disease arising out of and in the course of his or her employment shall be eligible for benefits under this chapter as an occupational disease.

7. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with **[**a**] the immediate** prior employer was the **[**substantial contributing**] prevailing** factor **[**to**] in causing** the injury, the prior employer shall be liable for such occupational disease. **"The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.**

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising

out of and in the course of **[**his**]** **the employee's** employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

3. No compensation shall be allowed under this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

4. Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.

5. Where the injury is caused by the **[**willful**]** failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, **[**which rule has been kept posted in a conspicuous place on the employer's premises,**]** the compensation and death benefit provided for herein shall be reduced fifteen percent**[**; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a diligent effort to cause his employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees**]**.

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to the use of alcohol or nonprescribed controlled drugs in the workplace, **[**which rule or policy has been kept posted in a conspicuous place on the employer's premises,**]** the compensation and death benefit provided for herein shall be reduced **[**fifteen**]** **fifty** percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs**[**; provided, that it is shown that the employee had actual knowledge of the rules or policy so adopted by the employer and, provided further that the employer had, prior to the injury,

made a diligent effort to inform the employee of the requirement to obey any reasonable rule or policy adopted by the employer**]**.

(2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy **[**which is posted and publicized as set forth in subdivision (1)**]** is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited. The forfeiture of benefits or compensation shall not apply **[**when:

(a) The employer has actual knowledge of the employee's use of the alcohol or nonprescribed controlled drugs and in the face thereof fails to take any recuperative or disciplinary action; or

(b)**]** **if,** as part of the employee's employment, he is authorized by the employer to use such alcohol or nonprescribed controlled drugs.

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury.

7. Where the employee's participation in a voluntary recreational activity or program is the proximate cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:

(a) The employee was directly ordered by the employer to participate in such recreational activity or program;

(b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or

(c) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

8. Mental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of

the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.128. 1. It shall be unlawful for any person to:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of benefits pursuant to a workers' compensation claim;

(2) Knowingly present multiple claims for the same occurrence **[**with intent to defraud**]**;

(3) **[**Purposefully prepare, make or subscribe to any writing with intent to present or use the same, or to allow it to be presented in support of any false or fraudulent claim;

(4)**]** Knowingly assist, abet, solicit or conspire with:

(a) Any person who knowingly presents any false or fraudulent claim for the payment of benefits;

(b) Any person who knowingly presents multiple claims for the same occurrence **[**with an intent to defraud**]**; or

(c) Any person who **[**purposefully**]** prepares, makes or subscribes to any writing with the intent to present or use the same, or to allow it to be presented in support of any such claim;

[(5)**]** **(4)** Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit;

[(6)**]** **(5)** Knowingly submit a claim for a health care benefit which was not used by, or on behalf of, the claimant;

[(7)**]** **(6)** Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud;

[(8)**]** **(7)** Knowingly make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any benefit;

[(9)**]** **(8)** Knowingly make or cause to be made any false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from making a legitimate claim.

(9) For the purposes of this subsection, the statute of limitation for prosecution shall be three years.

For the purposes of subdivisions **[**(8)**]** **(7)** and **[**(9)**]** **(8)** of this subsection, the term "statement" includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X ray or test results.

2. It shall be unlawful for any insurance company or self-insurer in this state to:

(1) Intentionally refuse to comply with known and legally indisputable compensation obligations;

(2) Discharge or administer compensation obligations in a dishonest manner; and

(3) Discharge or administer compensation obligations in such a manner as to cause injury to the public or those persons dealing with the employer or insurer.

3. Any person violating any of the provisions of subsections 1 and 2 of this section or section 287.129, shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a fine not to exceed ten thousand dollars or double the value of the fraud whichever is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsections 1 and 2 of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of subsections 1 and 2 of this section or the provisions of section 287.129 shall be guilty of a class D felony.

4. Any person who knowingly misrepresents any fact in order to obtain workers' compensation insurance at less than the proper rate for that insurance shall be guilty of a class A misdemeanor. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of this section or the provisions of section 287.129 shall be guilty of a class D felony.

5. Any employer failing to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a penalty **[**in**]** **up to** an amount equal to twice the annual premium the employer would have paid had such employer been insured or twenty-five thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of this section or the provisions of

section 287.129 shall be guilty of a class D felony.

6. Any person may file a complaint alleging fraud or noncompliance with this chapter with a legal advisor in the division of workers' compensation. The legal advisor shall refer the complaint to the fraud and noncompliance unit within the division. The unit shall investigate all complaints and present any finding of fraud or noncompliance to the director, who may refer the file to the attorney general. The attorney general may prosecute any fraud or noncompliance associated with this chapter. All costs incurred by the attorney general associated with any investigation and prosecution pursuant to this subsection shall be paid out of the workers' compensation fund. Any fines or penalties levied and received as a result of any prosecution under this section shall be paid to the workers' compensation fund. Any restitution ordered as a part of the judgment shall be paid to the person or persons who were defrauded.

7. There is hereby established in the division of workers' compensation a fraud and noncompliance administrative unit responsible for investigating incidences of fraud and failure to comply with the provisions of this chapter.

287.140. 1. In addition to all other compensation **paid to the employee pursuant to this section**, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620, RSMo. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the **employee's principal** place of **[**injury or the place of his residence**]** **business**, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who

resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment. **[**In addition to all other payments authorized or mandated under this subsection, when an employee who has returned to full-time employment is required to submit to a medical examination for the purpose of evaluating permanent disability, or to undergo physical rehabilitation, the employer or its insurer shall pay a proportionate weekly compensation benefit based on the provisions of section 287.180 for such wages that are lost due to time spent undergoing such medical examinations or physical rehabilitation, except that where the employee is undergoing physical rehabilitation, such proportionate weekly compensation benefit payment shall be limited to a time period of no more than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall mean the restoration of the seriously injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker. Determination as to what care and restoration constitutes physical rehabilitation shall be the sole province of the treating physician. Should the employer or its insurer contest the determination of the treating physician, then the director shall review the case at question and issue his determination. Such determination by the director shall be appealable like any other finding of the director or the division. Serious injury includes, but is not limited to, quadriplegia, paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and back injuries not amenable alone to recognized medical and surgical procedures.**]**

2. **The employer may allow or require an employee to use any of the employee's accumulated paid vacation, leave, personal leave, or medical or sick leave to attend to medical treatment, physical rehabilitation, or medical evaluations during work time. The intent of**

this subsection is to specifically supercede and abrogate any case law that contradicts the express language of this statute.

3. If it be shown to the division or the commission that the requirements are being furnished in such manner that there is reasonable ground for believing that the life, health, or recovery of the employee is endangered thereby, the division or the commission may order a change in the physician, surgeon, hospital or other requirement.

[3.**]** **4.** All fees and charges under this chapter shall be fair and reasonable, shall be subject to regulation by the division or the commission, or the board of rehabilitation in rehabilitation cases. A health care provider shall not charge a fee for treatment and care which is governed by the provisions of this chapter greater than the usual and customary fee the provider receives for the same treatment or service when the payor for such treatment or service is a private individual or a private health insurance carrier. The division or the commission, or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all disputes as to such charges. A health care provider is bound by the determination upon the reasonableness of health care bills.

[4.**]** **5.** The division shall, by regulation, establish methods to resolve disputes concerning the reasonableness of medical charges, services, or aids. This regulation shall govern resolution of disputes between employers and medical providers over fees charged, whether or not paid, and shall be in lieu of any other administrative procedure under this chapter. The employee shall not be a party to a dispute over medical charges, nor shall the employee's recovery in any way be jeopardized because of such dispute.

[5.**]** **6.** No compensation shall be payable for the death or disability of an employee, if and insofar as the death or disability may be caused, continued or aggravated by any unreasonable refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the opinion of the division or the commission, inconsiderable in view of the seriousness of the injury. If the employee dies as a result of an operation made necessary by the injury, the death shall be deemed to be caused by the injury.

[6.**]** **7.** The testimony of any physician or chiropractic physician who treated the employee shall be admissible in evidence in any proceedings for compensation under this chapter, subject to all of the provisions of section 287.210.

[7.**]** **8.** Every hospital or other person furnishing the employee with medical aid shall permit its record to be copied by and shall furnish full information to the division or the commission, the employer, the employee or his dependents and any other party to any proceedings for compensation under this chapter, and certified copies of the records shall be admissible in evidence in any such proceedings.

[8.**]** **9.** The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof. **[**The director of the division shall establish a procedure whereby a claim for compensation may be reactivated after settlement of such claim is completed. The claim shall be reactivated only after the claimant can show good cause for the reactivation of this claim and the claim shall be made only for the payment of medical procedures involving life-threatening surgical procedures or if the claimant requires the use of a new, or the modification, alteration or exchange of an existing, prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation or condition which, if not treated immediately, will likely result in the death of the injured worker.**]**

[9.**]** **10.** Nothing in this chapter shall prevent an employee being provided treatment for his injuries by prayer or spiritual means if the employer does not object to the treatment.

[10.**]** **11.** The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider; provided, however, that such physicians, surgeons or other health care providers shall offer only those services authorized within the scope of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

[11.**]** **12.** Any physician or other health care provider who orders, directs or refers a patient for treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the time of the referral, disclose in writing if such health care provider, any of his partners or his employer has a financial interest in the institution or facility to which the patient is being referred, to the following:

(1) The patient;

(2) The employer of the patient with workers' compensation liability for

the injury or disease being treated;

(3) The workers' compensation insurer of such employer; and

(4) The workers' compensation adjusting company for such insurer.

[12.**]** **13.** Violation of subsection **[**11**]** **12** of this section is a class A misdemeanor.

[13.**]** **14.** (1) No hospital, physician or other health care provider, other than a hospital, physician or health care provider selected by the employee at his own expense pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit reporting agency any failure of the employee to make such payment, when an injury covered by this chapter has occurred and such hospital, physician or health care provider has received actual notice given in writing by the employee, the employer or the employer's insurer. Actual notice shall be deemed received by the hospital, physician or health care provider five days after mailing by certified mail by the employer or insurer to the hospital, physician or health care provider.

(2) The notice shall include:

(a) The name of the employer;

(b) The name of the insurer, if known;

(c) The name of the employee receiving the services;

(d) The general nature of the injury, if known; and

(e) Where a claim has been filed, the claim number, if known.

(3) When an injury is found to be noncompensable under this chapter, the hospital, physician or other health care provider shall be entitled to pursue the employee for any unpaid portion of the fee or other charges for authorized services provided to the employee. Any applicable statute of limitations for an action for such fees or other charges shall be tolled from the time notice is given to the division by a hospital, physician or other health care provider pursuant to subdivision (6) of this subsection, until a determination of noncompensability in regard to the injury which is the basis of such services is made, or in the event there is an appeal to the labor and industrial relations commission, until a decision is rendered by that commission.

(4) If a hospital, physician or other health care provider or a debt collector on behalf of such hospital, physician or other health care provider pursues any action to collect from an employee after such notice is properly given, the employee shall have a cause of action against the hospital, physician or other

health care provider for actual damages sustained plus up to one thousand dollars in additional damages, costs and reasonable attorney's fees.

(5) If an employer or insurer fails to make payment for authorized services provided to the employee by a hospital, physician or other health care provider pursuant to this chapter, the hospital, physician or other health care provider may proceed pursuant to subsection 4 of this section with a dispute against the employer or insurer for any fees or other charges for services provided.

(6) A hospital, physician or other health care provider whose services have been authorized in advance by the employer or insurer may give notice to the division of any claim for fees or other charges for services provided for a work-related injury that is covered by this chapter, with copies of the notice to the employee, employer and the employer's insurer. Where such notice has been filed, the administrative law judge may order direct payment from the proceeds of any settlement or award to the hospital, physician or other health care provider for such fees as are determined by the division. The notice shall be on a form prescribed by the division.

287.143. As a guide to the interpretation and application of sections 287.144 to 287.149, sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational rehabilitation to a severely injured employee. **An employee must submit to "appropriate vocational testing" and a "vocational rehabilitation assessment" scheduled by an employer or its insurer.**

287.150. 1. Where a third person is liable to the employee or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employee or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his dependents would have been entitled to recover. Any recovery by the employer against such third person shall be apportioned between the employer and employee or his dependents using the provisions of subsections 2 and 3 of this section.

2. When a third person is liable for the death of an employee and compensation is paid or payable under this chapter, and recovery is had by a dependent under this chapter either by judgment or settlement for the wrongful death of the employee, the employer **shall have a subrogation lien on any recovery and** shall receive or have credit for sums paid or payable under this

chapter to any of the dependents of the deceased employee to the extent of the settlement or recovery by such dependents for the wrongful death. Recovery by the employer and credit for future installments shall be computed using the provisions of subsection 3 of this section relating to comparative fault of the employee.

3. Whenever recovery against the third person is effected by the employee or his dependents, the employer shall pay from his share of the recovery a proportionate share of the expenses of the recovery, including a reasonable attorney fee. After the expenses and attorney fee have been paid, the balance of the recovery shall be apportioned between the employer and the employee or his dependents in the same ratio that the amount due the employer bears to the total amount recovered if there is no finding of comparative fault on the part of the employee, or the total damages determined by the trier of fact if there is a finding of comparative fault on the part of the employee. Notwithstanding the foregoing provision, the balance of the recovery may be divided between the employer and the employee or his dependents as they may otherwise agree. Any part of the recovery found to be due to the employer, the employee or his dependents shall be paid forthwith and any part of the recovery paid to the employee or his dependents under this section shall be treated by them as an advance payment by the employer on account of any future installments of compensation in the following manner:

(1) The total amount paid to the employee or his dependents shall be treated as an advance payment if there is no finding of comparative fault on the part of the employee; or

(2) A percentage of the amount paid to the employee or his dependents equal to the percentage of fault assessed to the third person from whom recovery is made shall be treated as an advance payment if there is a finding of comparative fault on the part of the employee.

4. In any case in which an injured employee has been paid benefits from the second injury fund as provided in subsection 3 of section 287.141, and recovery is had against the third party liable to the employee for the injury, the second injury fund shall be subrogated to the rights of the employee against said third party to the extent of the payments made to him from such fund, subject to provisions of subsections 2 and 3 of this section.

5. No construction design professional who is retained to perform professional services on a construction project or any employee of a construction

design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

6. Any provision in any contract or subcontract, where one party is an employer in the construction group of code classifications, which purports to waive subrogation rights provided under this section in anticipation of a future injury or death is hereby declared against public policy and void. Each contract of insurance for workers' compensation shall require the insurer to diligently pursue all subrogation rights of the employer and shall require the employer to fully cooperate with the insurer in pursuing such recoveries, except that the employer may enter into compromise agreements with an insurer in lieu of the insurer pursuing subrogation against another party. The amount of any subrogation recovery by an insurer shall be credited against the amount of the actual paid losses in the determination of such employer's experience modification factor within forty-five days of the collection of such amount.

287.170. 1. For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability at the weekly rate of compensation in effect under this section on the date of the injury for which compensation is being made. The amount of such compensation shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of

the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

(5) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week.

2. Temporary total disability payments shall be made to the claimant by check or other negotiable instruments approved by the director which will not result in delay in payment and shall be forwarded directly to the claimant without intervention, or, when requested, to claimant's attorney if represented, except as provided in section 454.517, RSMo, by any other party except by order of the division of workers' compensation.

3. **[**The employer shall be entitled to a dollar-for-dollar credit against any benefits owed pursuant to this section in an amount equal to the amount of unemployment compensation paid to the employee and charged to the employer during the same adjudicated or agreed-upon period of temporary total disability.**]** **An employee is disqualified from receiving temporary total disability during any period of time in which the claimant applies and receives unemployment compensation.**

4. If the employee is terminated from post injury employment based upon the employee's post injury misconduct, neither temporary total disability nor temporary partial disability benefits under section 287.170 or 287.180 are payable.

287.190. 1. For permanent partial disability, which shall be in addition to compensation for temporary total disability or temporary partial disability paid

in accordance with sections 287.170 and 287.180, respectively, the employer shall pay to the employee compensation computed at the weekly rate of compensation in effect under subsection 5 of this section on the date of the injury for which compensation is being made, which compensation shall be allowed for loss by severance, total loss of use, or proportionate loss of use of one or more of the members mentioned in the schedule of losses.

SCHEDULE OF LOSSES

	Weeks
(1) Loss of arm at shoulder	232
(2) Loss of arm between shoulder and elbow	222
(3) Loss of arm at elbow joint	210
(4) Loss of arm between elbow and wrist	200
(5) Loss of hand at the wrist joint	175
(6) Loss of thumb at proximal joint	60
(7) Loss of thumb at distal joint	45
(8) Loss of index finger at proximal joint	45
(9) Loss of index finger at second joint	35
(10) Loss of index finger at distal joint	30
(11) Loss of either the middle or ring finger at the proximal joint	35
(12) Loss of either the middle or ring finger at second joint	30
(13) Loss of either the middle or ring finger at the distal joint	26
(14) Loss of little finger at proximal joint	22
(15) Loss of little finger at second joint	20
(16) Loss of little finger at distal joint	16
(17) Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb	207
(18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb	160
(19) Loss of one leg at or above ankle and below knee joint	155
(20) Loss of one foot in tarsus	150

(21) Loss of one foot in metatarsus 110

(22) Loss of great toe of one foot at proximal joint 40

(23) Loss of great toe of one foot at distal joint 22

(24) Loss of any other toe at proximal joint 14

(25) Loss of any other toe at second joint 10

(26) Loss of any other toe at distal joint .....

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(27) Complete deafness of both ears 180

(28) Complete deafness of one ear, the other being normal..... 49

(29) Complete loss of the sight of one eye 140

2. If the disability suffered in any of items (1) through (29) of the schedule of losses is total by reason of severance or complete loss of use thereof the number of weeks of compensation allowed in the schedule for such disability shall be increased by ten percent.

3. For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

4. If an employee is seriously and permanently disfigured about the head, neck, hands or arms, the division or commission may allow such additional sum for the compensation on account thereof as it may deem just, but the sum shall not exceed forty weeks of compensation. If both the employer and employee agree, the administrative law judge may utilize a photograph of the disfigurement in determining the amount of such additional sum.

5. The amount of compensation to be paid under subsection 1 of this section shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision

shall not exceed an amount equal to forty-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, but before August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-two percent of the state average weekly wage;

(5) For all injuries occurring on or after August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-five percent of the state average weekly wage.

6. "Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating approved by an administrative law judge or legal advisor, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959. **Permanent partial disability or permanent total disability must be demonstrated and certified by a physician using only medical evidence based upon "objective relevant medical findings" as defined in section 287.020. The employee shall not be entitled to recover**

permanent partial or permanent total disability for the aggravation of a preexisting condition, except to the extent that the work-related injury caused increased permanent disability. Any award of compensation shall be reduced by the amount of permanent partial disability determined to be a preexisting disease or condition sufficient to cause or prolong the disability or need for treatment.

287.197. 1. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of five hundred, one thousand, and two thousand cycles per second. Loss of hearing ability for frequency tones above two thousand cycles per second are not to be considered as constituting disability for hearing.

2. The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of five hundred, one thousand, and two thousand cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average **[**fifteen**]** **twenty-six** decibels or less in the three frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average **[**eighty-two**]** **ninety-two** decibels or more in the three frequencies, then the same shall constitute and be total or one hundred percent compensable hearing loss. **The decibel standards established by this subsection are based on the most current ANSI occupational hearing loss standard. The division shall, by rule, adopt any superseding ANSI occupational hearing loss standards regarding testing frequencies and decibel standards for measuring hearing loss.**

3. There shall be payable as permanent partial disability for total occupational deafness of one ear forty-nine weeks of compensation; for total occupational deafness of both ears, one hundred eighty weeks of compensation; and for partial occupational deafness in one or both ears, compensation shall be paid for such periods as are proportionate to the relation which the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. The amount of the hearing loss shall be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age, according to the provisions hereinafter set forth.

4. In measuring hearing **[**impairment**]** **disability**, the lowest measured

losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding **[**fifteen**]** **twenty-six** decibels an allowance of one and one-half percent shall be made up to the maximum of one hundred percent which is reached at **[**eighty-two**]** **ninety-two** decibels.

5. In determining the binaural (both ears) percentage of loss, the percentage of **[**impairment**]** **disability** in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of **[**impairment**]** **disability** in the poorer ear and the sum of the two divided by six. The final percentage shall represent the binaural hearing **[**impairment**]** **disability**.

6. Before determining the percentage of hearing **[**impairment**]** **disability**, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

7. No claim for compensation for occupational deafness may be filed until after **[**six months'**]** **one month's** separation from the type of noisy work for the last employer in whose employment the employee was at any time during such employment exposed to harmful noise, and the last day of such period of separation from the type of noisy work shall be the date of disability.

8. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by a hearing test or by other competent evidence, whether or not the employee was exposed to noise within **[**six months**]** **one month** preceding such test, the employer shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

9. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

287.203. Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may

be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. **[**Reasonable cost of recovery shall be awarded to the prevailing party.**]**

287.270. No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; except as provided in subsection 3 of section 287.170, and **as provided in this section.** Employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical or hospital benefits paid to or for the employee or his dependents on account of the injury, disability, or death, pursuant to the provisions of the contract. **If the employee is receiving retirement benefits under the Federal Social Security Act or retirement benefits from any other retirement system, program, or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers' compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the Federal Social Security Act, that is attributable to payments or contributions made by the employee.**

287.380. 1. Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within **[**ten days after knowledge of an accident resulting in personal injury to any employee notify the division thereof, and shall, within one month from the date of filing of the original notification of**] thirty days after knowledge of the** injury, file with the division under such rules and regulations and in such form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or injured employee, the time and cause of the accident, the nature and extent of the injury, the name and address of the employee's and the

employer's or insurer's attorney of record, if any, the medical cost incurred in treating the injured employee, the amount of lost work time of the employee as a result of the injury and such other information as the director may reasonably require in order to maintain in the division, accurate and complete data on the impact of work-related injuries on the workers' compensation system. The division shall collect and maintain such data in such a form as to be readily retrieved and available for analysis by the division. Employers shall report all injuries to their insurance carrier, or third-party administrators, if applicable, within five days of the date of the injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. Where an employer reports injuries covered pursuant to this chapter to his insurer or third-party administrator, the insurer or third-party administrator shall be responsible for filing the report prescribed in this section.

2. Every employer and his insurer, and every injured employee, his dependents and every person entitled to any rights hereunder, and every other person receiving from the division or the commission any blank reports with direction to fill out the same shall cause the same to be promptly returned to the division or the commission properly filled out and signed so as to answer fully and correctly to the best of his knowledge each question propounded therein, and a good and sufficient reason shall be given for failure to answer any question.

3. No information obtained under the provisions of this section shall be disclosed to persons other than the parties to compensation proceedings and their attorneys, except by order of the division or the commission, or at a hearing of compensation proceeding, but such information may be used by the division or the commission for statistical purposes.

4. Any person, including any employer, insurer or any employee, who violates any of the provisions of this section, including any employer or insurer who knowingly fails to report any accident under the provisions of subsection 1 of this section, or anyone who knowingly makes a false report or statement in writing to the division or the commission, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both the fine and imprisonment.

287.390. 1. **[**Nothing in this chapter shall be construed as preventing the**]** Parties to claims hereunder **[**from entering**]** **may enter** into voluntary

agreements in settlement thereof, but no agreement by an employee or his **or her** dependents to waive his **or her** rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. **An administrative law judge, associate administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement.**

2. A compromise settlement approved by an administrative law judge or the commission during the employee's lifetime shall extinguish and bar all claims for compensation for the employee's death if the settlement compromises a dispute on any question or issue other than the extent of disability or the rate of compensation.

3. Notwithstanding the provisions of section 287.190, an employee shall be afforded the option of receiving a compromise settlement as a one-time lump sum payment. A compromise settlement approved by an administrative law judge or the commission shall indicate the manner of payment chosen by the employee.

4. A minor dependent, by parent or conservator, may compromise disputes and may enter into a compromise settlement agreement, and upon approval by an administrative law judge or the commission the settlement agreement shall have the same force and effect as though the minor had been an adult. The payment of compensation by the employer in accordance with the settlement agreement shall discharge the employer from all further obligation.

287.420. No proceedings for compensation **for any accident** under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, **[**have**] has** been given to the employer **[**as soon as practicable after the happening thereof but not**] no** later than thirty days after the accident, **[**unless the division or the commission finds that there was good cause for failure to give the notice, or that**] unless** the employer was not prejudiced by failure to receive the notice. **[**No defect or inaccuracy in the notice shall invalidate it unless the commission finds

that the employer was in fact misled and prejudiced thereby.**] No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.**

287.510. In any case a temporary or partial award of compensation may be made, and the same may be modified from time to time to meet the needs of the case, and the same may be kept open until a final award can be made, and if the same be not complied with, the amount **[**thereof**] equal to the value of compensation ordered and unpaid** may be doubled in the final award, if the final award shall be in accordance with the temporary or partial award.

287.550. All proceedings before the commission or any commissioner shall be **[**simple, informal and summary, and without regard to the technical rules of evidence, and no defect or irregularity therein shall invalidate the same. Except as otherwise provided in this chapter,**] in accordance with section 287.800.** All such proceedings shall be according to such rules and regulations as may be adopted by the commission.

287.715. 1. For the purpose of providing for revenue for the second injury fund, every authorized self-insurer, and every workers' compensation policyholder insured pursuant to the provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with the provisions of this section. The annual surcharge imposed under this section shall apply to all workers' compensation insurance policies and self-insurance coverages which are written or renewed on or after April 26, 1988, including the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any law to the contrary, the surcharge imposed pursuant to this section shall not apply to any reinsurance or retrocessional transaction.

2. **[**Prior to December 31, 1993, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the ensuing calendar year, and shall calculate the total amount of the annual surcharge to be imposed during the ensuing calendar year upon all workers' compensation holders and authorized self-insurers. The amount

of the annual surcharge to be imposed upon all policyholders and self-insurers shall equal the moneys estimated by the director of the division of workers' compensation to be payable from the second injury fund during the calendar year for which the annual surcharge is to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.**]** Beginning October 31, **[**1993**]** **2005**, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the **[**ensuing**]** **following** calendar year and shall calculate the total amount of the annual surcharge to be imposed upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed **during the following calendar year** upon each policyholder and self-insured for the **[**ensuing**]** **following** calendar year commencing with the calendar year beginning on January 1, **[**1994**]** **2006**, shall be set at and calculated against a percentage **not to exceed three percent** of the policyholder's or self-insured's workers' compensation net deposits, net premiums or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys projected to be paid from the second injury fund in the **[**ensuing**]** **following** calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first

of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

3. All surcharge amounts imposed by this section shall be paid to the Missouri director of revenue and shall be deposited to the credit of the second injury fund.

4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders.

5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer fails to make timely transfer to the director of revenue of surcharges actually collected from policyholders, as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties assessed under this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.

287.800. All of the provisions of this chapter shall be **[**liberally**]** **impartially** construed **[**with a view to the public welfare, and a substantial compliance therewith shall be**]** **to provide** sufficient **[**to give**]** effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission**[**, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto**]**. **The labor and industrial relations commission and the division of workers' compensation shall apply an impartial standard of review when weighting evidence and resolving factual conflicts.**

287.865. 1. Moneys collected by or on behalf of the division of workers' compensation and dispersed to the corporation shall be vested in the corporation and shall not thereafter be deemed state property and shall not thereafter be subject to appropriation by the legislature, the treasurer, or any other state agency.

2. All moneys in the insolvency fund, exclusive of administrative costs reasonably necessary to conduct the business of the corporation, as determined at the discretion of the board, as described in section 287.867, shall be used solely

to compensate persons entitled to receive workers' compensation benefits from a Missouri self-insurer which is unable to meet its workers' compensation benefit obligations and to defray the expenses of the fund.

3. The board of directors of the corporation shall direct the investment of the moneys in the fund, and all returns on the investments shall be retained in the fund. The corporation shall, at the request of the director of the division, annually submit to an audit by an independent certified public accountant or by such other person or persons as the director deems sufficient, and a copy of the audit report shall be transmitted to the Missouri division of workers' compensation and to the corporation.

4. The board of directors of the corporation shall, based on such information as is reasonably available, report to the director of the division upon all matters germane to the solvency, liquidation, rehabilitation or conservation of any workers' compensation self-insurer and such reports shall not be deemed public documents under the provisions of section 610.010, RSMo, or any other law.

5. Upon creation of the insolvency fund pursuant to the provisions of section 287.867, the corporation is obligated for payment of compensation under this chapter to insolvent members' employees resulting from incidents and injuries to the extent of covered claims existing prior to the issuance of an order of liquidation against the member employer with a finding of insolvency which has been entered by a court of competent jurisdiction in the member employer's state of domicile or of this state under the provisions of sections 375.950 to 375.990, RSMo, in which the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order; or prior to the date of determination by the board of directors that the member employer has fully expended all surety bonds, insurance or reinsurance, and all other available assets and is not able to pay compensation benefits at that time. All incidents giving rise to claims for compensation under this chapter must occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, except as provided for certain claims existing prior to August 28, 1992, pursuant to the provisions of subsection 7 of this section, and the employee must make timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Any proceeds derived by such claim of the employee in bankruptcy shall be an offset of any

amounts due and owing to the employee under the workers' compensation law. Any such obligation of the corporation includes only the amount due the injured worker or workers of the insolvent member under this chapter. In no event is the corporation obligated to a claimant in an amount in excess of the obligation of the insolvent member employer. The corporation shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all the rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the corporation be liable for any penalties or interest. **Any claimant claiming benefits under chapter 287 against an insolvent self-insured member of the Missouri Private Sector and Individual Guaranty Corporation shall, before the division of workers' compensation for the state of Missouri attaches jurisdiction, file with the bankruptcy court having jurisdiction over the bankruptcy of the self-insured employer, a proof of claim or other claim forms required by the appropriate bankruptcy court to secure a claim against the bankrupt employer. Any such claimant shall provide to the Missouri Private Sector Self-Insurance Guaranty Corporation and to the division of workers' compensation a copy, certified by the bankruptcy court, attesting to the filing of such claim or claim forms. Certification shall include the date of alleged loss alleged against the bankrupt employer; description of injuries claimed; and date the claim or claims were filed with the bankruptcy court. Failure of the claimant to provide such information shall bar the division from invoking jurisdiction over any matter for which an employee may otherwise be entitled to benefits under this chapter.**

6. The corporation may:

(1) Request that the director revoke any member employer's authority to act as a qualified private sector individual self-insurer if the self-insurer member fails to maintain membership in the corporation or fails to pay the assessments levied by the division under sections 287.860 to 287.885;

(2) Sue or be sued, including appearing in, prosecuting or defending and appealing any action on a claim brought by or against the corporation. The corporation shall have full rights of subrogation against any source of payment or reimbursement for payments by the corporation on behalf of a Missouri workers' compensation self-insurer. The corporation shall have a right of recovery

through the maintenance of an action against any third party, other than a coemployee, who is in any way responsible or liable for injury or death to a covered worker. The corporation is also authorized to take all necessary action, including bringing an action at law or in equity to seek any available relief, including any action against any workers' compensation self-insurer, where the self-insurer has not paid all assessments levied by the division or the board of directors of the corporation. If the corporation is required to bring an action at law or in equity to enforce any obligations, rights or duties as regards a workers' compensation self-insurer, the court may award reasonable attorney's fees and costs to the corporation;

(3) Employ or retain such persons, including utilization of an in-house or a third-party administrator, fund manager, attorney, certified public accountant, auditor or other such person, and sufficient clerical staff, experts, professional staff and equipment, including sharing clerical staff and other costs with the division upon a mutually agreed upon paid basis, as are necessary to handle the claims and perform other duties of the corporation;

(4) Borrow funds, including authority to issue bonds or purchase excess or any appropriate insurance or reinsurance, necessary to effectuate the purposes of sections 287.860 to 287.885 or to protect the assets of this fund and the members of the board and their employees in accordance with the plan of operation;

(5) Negotiate and become a party to such contracts and perform such other acts as are necessary or proper to effectuate the purpose of sections 287.860 to 287.885;

(6) Become members of any trade association whose purpose includes furthering the understanding of the self-insurance industry in the state of Missouri, including the National Council of Self-Insurers, or other appropriate state, regional or national organizations;

(7) Review, on its own motion, or at the request of the director, all applications for initial and for membership renewal in the corporation, including financial or other appropriate background studies, actuarial studies, and other information or guidelines as may be necessary to ensure that the member is fully complying with the privileges of self-insurance. It shall be the primary duty of the division to provide adequate staff and equipment and technical assistance to thoroughly review initial applications and membership renewals through budgeted funds and initial applications and membership renewal application

fees. The corporation, however, shall have the right to, in difficult cases or situations where the work load cannot be adequately done without the help of the corporation, to assist in any assessment of any applicant;

(8) Issue opinions prior to a final determination by the division of workers' compensation as to whether or not to approve any applicant for membership in the corporation, to the division concerning any applicant, which opinions shall be considered by the division;

(9) Charge an applicant, in addition to the applicant's assessment, for initial or membership renewal in the corporation, a fee sufficient to cover the actual cost of examining the financial and safety conditions of the applicant.

7. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the division, upon certification of the board of directors, shall levy assessments based on the annual modified standard premium, provided that no such assessments shall ever exceed, in the aggregate, from all members, an amount in excess of one million dollars at any given time, exclusive of all new members' assessments in the amounts collected for same, as is set forth in the plan of operation pursuant to the provisions of section 287.870. Such assessments shall be made at a maximum annual assessment of one-sixth of one percent of the annual modified standard premium. The initial assessment shall be for an amount equal to six hundred thousand dollars, the amount of such fee to be levied over a three-year period, one-third of the six hundred thousand dollars to be collected and received the first year, one-third to be collected and received in the second year, and one-third to be collected and received in the third year, the first year to commence as of the date of incorporation, assessments to be prorated on an annualized basis. The director of the division shall annually certify to the corporation the assessment percentage due from the members of the corporation. The director of the division and the board of the corporation shall within the procedures as specified in this section and as established for the premium tax billings, as provided in sections 287.690, 287.710, 287.715 and 287.730, notify, assess, and receive the assessments due from those members for the prior calendar year ending on the thirty-first day of December, with the exception that this annual assessment shall be payable in full, on or before the first day of March directly to the corporation. The department of insurance shall make available to the corporation or director of the division, data on the self-insured employer's workers' compensation administrative tax data for use in verification of the assessment as provided in

this section. If assessments provided in this section are not paid, the corporation shall certify the fact to the division. Out of the first amounts assessed, there shall be set aside an amount equal to fifty thousand dollars, which shall be applied retroactively, before August 28, 1992, to be used and applied for the benefit of employees who have open, outstanding claims, in existence, which have not already been fully and completely settled or for which there has been an award of judgment rendered, and for which there are moneys due and owing. The amount of payment and allocation of funds shall be within the exclusive discretion of the director, such payments to be made on a reasonably timely basis, as the director received funds for such purpose. In addition, there shall be no reassessments against any member unless the director feels the current balance of the fund is insufficient or, after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the corporation, the amount held shall be less than four hundred thousand dollars, at which point the director shall raise assessments sufficient to bring the minimum amount of the fund back up to six hundred thousand dollars or such other amount not to exceed, in any event, one million dollars based upon a maximum annual assessment of one-sixth of one percent of the annual modified standard premium as shall be necessary to effectuate the purposes of the corporation at that time.

8. Every assessment shall be made on a uniform percentage of the figure applicable, provided that the assessment levied against any self-insurer in any one year shall not exceed one-sixth of one percent of the annual modified standard premium during the calendar year preceding the date of the assessment. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each employer so assessed shall have at least thirty days' written notice as to the date the assessment is due and payable. The corporation shall levy assessments against any newly admitted member of the corporation on the basis of contribution under the plan of operation as provided in section 287.870 and the applicable rules and regulations established pursuant thereto.

9. If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

10. No state funds of any kind shall be allocated or paid to the corporation or any of its accounts except those state funds accruing to the corporation by and through the assignment of rights of any insolvent employer.

11. All moneys, property and other assets received, owned or otherwise held by the corporation shall be held in such a way as to safeguard the corporation's ability to assure that the purpose and objectives of the corporation shall be advanced and that moneys needed to pay claims to employees of an individual insolvent self-insurer in the private sector shall be preserved.

12. Income derived from the corporation assets and investments shall vest in the corporation and shall not inure, under any circumstances, to the benefit of any member, the division of workers' compensation or any of its employees, or any other party other than an employee. The corporation may reinvest that income as otherwise provided for investing corporation assets. All such investments of corporation income shall be made in such a way as to ensure the welfare of the employees of the private sector individual self-insurers that are financially unable to meet their workers' compensation benefit obligations. In the event that the corporation shall be dissolved, any surplus income previously held by the insolvency fund shall be held in trust for the benefit of the employees of insolvent private sector individual self-insurers in the state of Missouri.

13. The corporation and the insolvency fund shall pay no dividends, rebates, interest, or otherwise distribute any corporation or fund income to any of its members.

[287.215. No statement in writing made or given by an injured employee, whether taken and transcribed by a stenographer, signed or unsigned by the injured employee, or any statement which is mechanically or electronically recorded, or taken in writing by another person, or otherwise preserved, shall be admissible in evidence, used or referred to in any manner at any hearing or action to recover benefits under this law unless a copy thereof is given or furnished the employee, or his dependents in case of death, or their attorney, within fifteen days after written request for it by the injured employee, his dependents in case of death, or by their attorney. The request shall be directed to the employer or its insurer by certified mail.**]**