

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1390

AN ACT

To repeal sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation.

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

Section A. Sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, to read as follows:

287.200. 1. Compensation for permanent total disability shall be paid during the continuance of such disability from the date of maximum medical improvement for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom compensation may be payable as provided in subsection 1 of section 287.020. 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 during the year immediately preceding the injury, 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 during the year immediately preceding the injury, 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. Permanent total disability benefits that have accrued through the date of the injured employee's death are

the only permanent total disability benefits that are to be paid in accordance with section 287.230. The right to unaccrued compensation for permanent total disability of an injured employee terminates on the date of the injured employee's death in accordance with section 287.230, and does not survive to the injured employee's dependents, estate, or other persons to whom compensation might otherwise be payable.

3. (1) All claims for permanent total disability shall be determined in accordance with the facts. [When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his or her regular work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his or her regular work or its equivalent.] The employer and the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability.

(2) When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his or her regular work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his or her regular work or its equivalent. In any case where the life payment is suspended under this [subsection] subdivision, the commission may at reasonable times review the case and either the employee or the employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

(3) Upon filing of a written agreement signed by the claimant and his or her attorney, the commission shall change the name, information, or fee arrangement of the attorney or law firm associated with the claimant's case.

4. For all claims filed on or after January 1, 2014, for occupational diseases due to toxic exposure which result in a permanent total disability or death, benefits in this chapter shall be provided as follows:

(1) Notwithstanding any provision of law to the contrary, such amount as due to the employee during said employee's life as provided for under this chapter for an award of permanent total disability and death, except such amount shall only be paid when benefits under subdivisions (2) and (3) of this subsection have been exhausted;

(2) For occupational diseases due to toxic exposure, but not including mesothelioma, an amount equal to two hundred percent of the state's average weekly wage as of the date of diagnosis for one hundred weeks paid by the employer; and

(3) In cases where occupational diseases due to toxic exposure are diagnosed to be mesothelioma:

(a) For employers that have elected to accept mesothelioma liability under this subsection, an additional amount of three hundred percent of the state's average weekly wage for two hundred twelve weeks shall be paid by the employer or group of employers such employer is a member of. Employers that elect to accept mesothelioma liability under this subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by becoming a member of a group insurance pool. A group of employers may enter into an agreement to pool their liabilities under this subsection. If such group is joined, individual members shall not be required to qualify as individual self-

insurers. Such group shall comply with section 287.223. In order for an employer to make such an election, the employer shall provide the department with notice of such an election in a manner established by the department. The provisions of this paragraph shall expire on December 31, 2038; or

(b) For employers who reject mesothelioma under this subsection, then the exclusive remedy provisions under section 287.120 shall not apply to such liability. The provisions of this paragraph shall expire on December 31, 2038; and

(4) The provisions of subdivision (2) and paragraph (a) of subdivision (3) of this subsection shall not be subject to suspension of benefits as provided in subsection 3 of this section; and

(5) Notwithstanding any other provision of this chapter to the contrary, should the employee die before the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection are paid, the additional benefits are payable to the employee's spouse or children, natural or adopted, legitimate or illegitimate, in addition to benefits provided under section 287.240. If there is no surviving spouse or children and the employee has received less than the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection the remainder of such additional benefits shall be paid as a single payment to the estate of the employee;

(6) The provisions of subdivision (1) of this subsection shall not be construed to affect the employee's ability to obtain medical treatment at the employer's expense or any other benefits otherwise available under this chapter.

5. Any employee who obtains benefits under subdivision (2) of subsection 4 of this section for acquiring asbestosis who later obtains an award for mesothelioma shall not receive more benefits than such employee would receive having only obtained benefits for mesothelioma under this section.

287.470. 1. Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the commission may at any time upon a rehearing after due notice to the parties interested review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall immediately send to the parties and the employer's insurer a copy of the award. No such review shall affect such award as regards any moneys paid.

2. Upon the filing of a written agreement signed by the claimant and his or her attorney, the commission shall change the name, information, or fee arrangement of the attorney or law firm associated with the claimant's case.

287.610. 1. After August 28, 2005, the division may appoint additional administrative law judges for a maximum of forty authorized administrative law judges. Appropriations shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. The director of the division of workers' compensation shall publish and maintain on the division's website the appointment dates or initial dates of service for all administrative law judges.

2. [The thirteen administrative law judges with the most years of service shall be subject to a retention vote on August 28, 2008. The next thirteen administrative law judges with the most years of service in descending order shall be subject to a retention vote on August 28, 2012. Administrative law judges appointed and not previously referenced in this subsection shall be subject to a retention vote on August 28, 2016. Subsequent retention votes shall be held every twelve years. Any administrative law judge who has received two or more votes of no confidence under performance audits by the committee shall not receive a vote of retention.

3. The administrative law judge review committee members shall not have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. All members of the committee shall have a working knowledge of workers' compensation.

4. The committee shall within thirty days of completing each performance audit make a recommendation of confidence or no confidence for each administrative law judge.

5.1 The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete

finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

[6.] 3. Any of the administrative law judges employed pursuant to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

[7.] 4. All administrative law judges shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' required duties and responsibilities. Such training requirements shall be established by the division subject to

appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

[8. (1) The administrative law judge review committee shall conduct a performance audit of all administrative law judges every two years. The audit results, stating the committee's recommendation of confidence or no confidence of each administrative law judge shall be sent to the governor no later than the first week of each legislative session immediately following such audit. Any administrative law judge who has received three or more votes of no confidence under two successive performance audits by the committee may have their appointment immediately withdrawn.

(2) The review committee shall consist of one member appointed by the president pro tem of the senate, one member appointed by the minority leader of the senate, one member appointed by the speaker of the house of representatives, and one member appointed by the minority leader of the house of representatives. The governor shall appoint to the committee one member selected from the commission on retirement, removal, and discipline of judges. This member shall act as a member ex officio and shall not have a vote in the committee. The committee shall annually elect a chairperson from its members for a term of one year. The term of service for all members shall be two years. The review committee members shall all serve without compensation. Necessary expenses for review committee members and all necessary support services to the review committee shall be provided by the division.]

5. The director of the division may file a complaint with the administrative hearing commission seeking to remove

an administrative law judge from office for one or any combination of causes stated in subsection 6 of this section. Prior to the filing of the complaint, the director shall notify the administrative law judge in writing of the reasons for the complaint. The administrative law judge shall have ninety days from the day the complaint was made to remedy the complained of behavior if the reason for the complaint is willful neglect of duty or incompetency.

6. If the reasons for the complaint are willful neglect of duty or incompetency, and the reasons have not been remedied after ninety days, the director may file the complaint with the administrative hearing commission in the same manner as is provided by chapter 621. The director may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any administrative law judge for any one or any combination of the following causes: the administrative law judge has committed any criminal offense, regardless of whether a criminal charge has been filed; has been convicted, or has entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state, the United States, or of any country, regardless of whether sentence is imposed or is guilty of misconduct; habitual intoxication; willful neglect of duty; corruption in office; incompetency; or has committed any act that involves moral turpitude or oppression in office.

7. After the director has filed a complaint before the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that:

(1) The grounds, as provided in subsection 6 of this section, for disciplinary action are met, the director may, singly or in combination, issue the following disciplinary

actions against the administrative law judge: removal from office, suspension from the performance of duties for a period of time, or other discipline as determined by the director. The director shall make a record of written findings of fact and conclusions of law with respect to the issues and shall put a copy of such record in the administrative law judge's permanent file; or

(2) There are no grounds for disciplinary action, the administrative law judge shall immediately resume duties and shall receive any attorney's fees due under section 536.087.

8. Notwithstanding any provision of this section to the contrary, the following events or acts by an administrative law judge are deemed to be an immediate threat to the administration of the provisions of chapter 287 and shall be considered cause for suspension with pay of the administrative law judge without notice, at the discretion of the director:

(1) A crime for which the administrative law judge is being held without bond for a period of more than fourteen days;

(2) Suspension or revocation of a license to practice law; or

(3) A declaration of incapacity by a court of competent jurisdiction.

9. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536.

287.615. 1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. Beginning January 1, 2006,

the annual salary of each administrative law judge[,] and administrative law judge in charge[, and chief legal counsel] shall be as follows:

(1) [For any chief legal counsel located at the division office in Jefferson City, Missouri, compensation at two thousand dollars above eighty percent of the rate at which an associate circuit judge is compensated;

(2)] For each administrative law judge, compensation at ninety percent of the rate at which an associate division circuit judge is compensated;

[(3)] (2) For each administrative law judge in charge, compensation at the same rate as an administrative law judge plus five thousand dollars.

2. Administrative law judges' and chief administrative law judges' compensation shall be determined solely by the rate outlined in this section and shall not increase when pay raises for executive employees are appropriated.

3. The salary of the director of the division of workers' compensation shall be set by the director of the department of labor and industrial relations, but shall not be less than the salary plus two thousand dollars of an administrative law judge in charge. The appointees in each classification shall be selected as nearly as practicable in equal numbers from each of the two political parties casting the highest and the next highest number of votes for governor in the last preceding state election.

287.812. As used in sections 287.812 to 287.855, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Administrative law judge", any person appointed pursuant to section 287.610 or section 621.015, or any person who hereafter may have by law all of the powers now

vested by law in administrative law judges appointed under the provisions of the workers' compensation law;

(2) "Beneficiary", a surviving spouse married to the deceased administrative law judge or legal advisor of the division of workers' compensation continuously for a period of at least two years immediately preceding the administrative law judge's or legal advisor's death and also on the day of the last termination of such person's employment as an administrative law judge or legal advisor for the division of workers' compensation, or if there is no surviving spouse eligible to receive benefits, any minor child of the deceased administrative law judge or legal advisor, or any child of the deceased administrative law judge or legal advisor who, regardless of age, is unable to support himself because of intellectual disability, disease or disability, or any physical handicap or disability, who shall share in the benefits on an equal basis with all other beneficiaries;

(3) "Benefit", a series of equal monthly payments payable during the life of an administrative law judge or legal advisor of the division of workers' compensation retiring pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as provided in sections 287.812 to 287.850;

(4) "Board", the board of trustees of the Missouri state employees' retirement system;

(5) ["Chief legal counsel", any person appointed or employed under section 287.615 to serve in the capacity of legal counsel to the division;

(6)] "Division", the division of workers' compensation of the state of Missouri;

[(7)] (6) "Legal advisor", any person appointed or employed pursuant to section 287.600, 287.615, or 287.616 to

serve in the capacity as a legal advisor or an associate administrative law judge and any person appointed pursuant to section 286.010 or pursuant to section 295.030, and any attorney or legal counsel appointed or employed pursuant to section 286.070;

[(8)] (7) "Salary", the total annual compensation paid for personal services as an administrative law judge or legal advisor, or both, of the division of workers' compensation by the state or any of its political subdivisions.

287.835. [1. No benefits provided pursuant to sections 287.812 to 287.855 shall be paid to any person who has been removed from office by impeachment or for misconduct, nor to any person who has been disbarred from the practice of law, nor to the beneficiary of any such persons.

2.] The board of trustees of the Missouri state employees' retirement system shall cease paying benefits to any beneficiary of an administrative law judge or legal advisor who is charged with the intentional killing of the administrative law judge or legal advisor without legal excuse or justification. A beneficiary who is convicted of such charges shall no longer be entitled to receive benefits. If the beneficiary is not convicted of such charge, the board shall resume payment of benefits and shall pay the beneficiary any benefits that were suspended pending resolution of such charge.

621.045. 1. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant

to be examined upon his or her qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

Missouri State Board of Accountancy
Missouri State Board for Architects,
Professional Engineers, Professional Land
Surveyors and Landscape Architects
Board of Barber Examiners
Board of Cosmetology
Board of Chiropody and Podiatry
Board of Chiropractic Examiners
Missouri Dental Board
Board of Embalmers and Funeral Directors
Board of Registration for the Healing Arts
Board of Nursing
Board of Optometry
Board of Pharmacy
Missouri Real Estate Commission
Missouri Veterinary Medical Board
Supervisor of Liquor Control
Department of Health and Senior Services
Department of Commerce and Insurance
Department of Mental Health
Board of Private Investigator Examiners.

2. If in the future there are created by law any new or additional administrative agencies which have the power to issue, revoke, suspend, or place on probation any license, then those agencies are under the provisions of this law.

3. The administrative hearing commission is authorized to conduct hearings and make findings of fact and conclusions of law in those cases brought by the Missouri

state board for architects, professional engineers, professional land surveyors and landscape architects against unlicensed persons under section 327.076.

4. The administrative hearing commission is authorized to conduct hearings and make findings of fact and conclusions of law in those cases brought by the division of workers' compensation of the department of labor and industrial relations against administrative law judges under section 287.610.

5. Notwithstanding any other provision of this section to the contrary, after August 28, 1995, in order to encourage settlement of disputes between any agency described in subsection 1 or 2 of this section and its licensees, any such agency shall:

(1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of any documents which are the basis thereof and the agency's initial settlement offer, or file a contested case against the licensee;

(2) If no contested case has been filed against the licensee, allow the licensee at least sixty days, from the date of mailing, to consider the agency's initial settlement offer and to contact the agency to discuss the terms of such settlement offer;

(3) If no contested case has been filed against the licensee, advise the licensee that the licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the administrative hearing commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee; and

(4) In any contact under this subsection by the agency or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.

[5.] 6. If the licensee desires review by the administrative hearing commission under subdivision (3) of subsection **[4]** 5 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee.

[6.] 7. When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under sections 536.067 and 621.100 upon a properly pled writing filed to initiate the contested case under this chapter or chapter 536, a default decision shall be entered against the licensee without further proceedings. The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law. Upon motion stating facts constituting a meritorious defense

and for good cause shown, a default decision may be set aside. The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision. "Good cause" includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.