

SECOND REGULAR SESSION

# SENATE BILL NO. 1385

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

5742S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 287.020, 287.021, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.210, 287.220, 287.240, 287.250, 287.300, 287.420, 287.430, 287.480, 287.510, 287.530, 287.540, and 287.780, RSMo, and to enact in lieu thereof nineteen 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, 287.021, 287.063, 287.067,  
2 287.120, 287.127, 287.140, 287.150, 287.210, 287.220, 287.240,  
3 287.250, 287.300, 287.420, 287.430, 287.480, 287.510, 287.530,  
4 287.540, and 287.780, RSMo, are repealed and nineteen new  
5 sections enacted in lieu thereof, to be known as sections  
6 287.020, 287.021, 287.063, 287.067, 287.120, 287.127, 287.140,  
7 287.150, 287.210, 287.220, 287.240, 287.250, 287.300, 287.420,  
8 287.430, 287.480, 287.510, 287.540, and 287.780, to read as  
9 follows:

287.020. 1. The word "employee" as used in this  
2 chapter shall be construed to mean every person in the  
3 service of any employer, as defined in this chapter, under  
4 any contract of hire, express or implied, oral or written,  
5 or under any appointment or election, including executive  
6 officers of corporations. Except as otherwise provided in  
7 section 287.200, any reference to any employee who has been  
8 injured shall, when the employee is dead, also include his  
9 or her dependents, and other persons to whom compensation

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

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 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 section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, 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. The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.

2. The word "accident" as used in this chapter shall mean **[an unexpected]** a 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 not compensable 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. An injury by accident **or occupational disease** 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]** all other **[factor]** **factors combined**, causing both the resulting medical condition and disability.

42           (2) An injury **by accident or occupational disease**  
43 shall be deemed to arise out of and in the course of the  
44 employment only if:

45           (a) It is reasonably apparent, upon consideration of  
46 all the circumstances, that the accident **or occupational**  
47 **disease** is the prevailing factor in causing the injury; [and]

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

52           (c) **The employee was engaged in a work activity to the**  
53 **greater benefit of the employer when the occupational**  
54 **disease was contracted or accident occurred.**

55           (3) An injury resulting directly or indirectly from  
56 idiopathic causes is not compensable.

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

62           (5) The terms "injury" and "personal injuries" shall  
63 mean violence to the physical structure of the body and to  
64 the personal property which is used to make up the physical  
65 structure of the body, such as artificial dentures,  
66 artificial limbs, glass eyes, eyeglasses, and other  
67 prostheses which are placed in or on the body to replace the  
68 physical structure and such disease or infection as  
69 naturally results therefrom. These terms shall in no case  
70 except as specifically provided in this chapter be construed  
71 to include occupational disease in any form, nor shall they  
72 be construed to include any contagious or infectious disease  
73 contracted during the course of the employment, nor shall

74 they include death due to natural causes occurring while the  
75 worker is at work.

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

82 5. Injuries sustained in company-owned or subsidized  
83 automobiles in accidents that occur while traveling from the  
84 employee's home to the [employer's] **employee's** principal  
85 place of business or from the [employer's] **employee's**  
86 principal place of business to the employee's home are not  
87 compensable. The extension of premises doctrine is  
88 abrogated to the extent it extends liability for accidents  
89 that occur on property not owned [or controlled] by the  
90 employer even if the accident occurs on customary, approved,  
91 permitted, usual or accepted routes used by the employee to  
92 get to and from their place of employment.

93 6. The term "total disability" as used in this chapter  
94 shall mean inability to return to any employment and not  
95 merely mean inability to return to the employment in which  
96 the employee was engaged at the time of the accident.

97 7. As used in this chapter and all acts amendatory  
98 thereof, the term "commission" shall hereafter be construed  
99 as meaning and referring exclusively to the labor and  
100 industrial relations commission of Missouri, and the term  
101 "director" shall hereafter be construed as meaning the  
102 director of the department of commerce and insurance of the  
103 state of Missouri or such agency of government as shall  
104 exercise the powers and duties now conferred and imposed

105 upon the department of commerce and insurance of the state  
106 of Missouri.

107 8. The term "division" as used in this chapter means  
108 the division of workers' compensation of the department of  
109 labor and industrial relations of the state of Missouri.

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

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

125 11. For the purposes of this chapter, "occupational  
126 diseases due to toxic exposure" shall only include the  
127 following: mesothelioma, asbestosis, berylliosis, coal  
128 worker's pneumoconiosis, bronchiolitis obliterans, silicosis,  
129 silicotuberculosis, manganism, acute myelogenous leukemia,  
130 and myelodysplastic syndrome.

131 12. For the purposes of this chapter, "maximum medical  
132 improvement" shall mean the point at which the injured  
133 employee's medical condition has stabilized and can no  
134 longer reasonably improve with additional medical care, as  
135 determined within a reasonable degree of medical certainty.

287.021. 1. As used in this chapter, the term  
2 "employee" includes a sheriff or deputy sheriff and the term  
3 "employer" includes a county in regard to a sheriff or  
4 deputy sheriff.

5 2. Each county shall provide workers' compensation  
6 insurance in an insurance group licensed to write workers'  
7 compensation insurance in this state, or a city also  
8 recognized as a county may have at all times sufficient self-  
9 insurance coverage, so that all sheriffs and deputy sheriffs  
10 in the county or self-insured city recognized as a county  
11 will be covered.

12 3. The "average [earnings] **weekly wage**" of a sheriff  
13 or deputy sheriff is his annual salary, or fourteen dollars  
14 per day, whichever is greater.

15 4. The provisions of this section shall not be  
16 construed to create any tort liability upon a county or to  
17 impose any duty upon a county other than complying with this  
18 chapter in relation to sheriffs and deputy sheriffs.

287.063. 1. An employee shall be conclusively deemed  
2 to have been exposed to the hazards of an occupational  
3 disease when for any length of time, however short, he is  
4 employed in an occupation or process in which the hazard of  
5 the disease exists, subject to the provisions relating to  
6 occupational disease due to repetitive motion, as is set  
7 forth in subsection 8 of section 287.067.

8 2. The employer liable for the compensation in this  
9 section provided shall be the employer in whose employment  
10 the employee was last exposed to the hazard of the  
11 occupational disease prior to evidence of disability,  
12 regardless of the length of time of such last exposure,  
13 subject to the notice provision of section 287.420.

14           3. The statute of limitation referred to in section  
15 287.430 shall not begin to run in cases of occupational  
16 disease until it becomes reasonably discoverable and  
17 apparent that an injury has been sustained related to such  
18 exposure, except that in cases of loss of hearing due to  
19 industrial noise said limitation shall not begin to run  
20 until the employee is eligible to file a claim as  
21 hereinafter provided in section 287.197. **An injury becomes**  
22 **"reasonably discoverable and apparent" when the injured**  
23 **employee knew or should have known his or her injury was**  
24 **related to his or her employment.**

          287.067. 1. In this chapter the term "occupational  
2 disease" is hereby defined to mean, unless a different  
3 meaning is clearly indicated by the context, an identifiable  
4 disease **or repetitive trauma injury** arising with or without  
5 human fault out of and in the course of the employment **as**  
6 **defined under subsection 3 of section 287.020.** Ordinary  
7 diseases of life to which the general public is exposed  
8 outside of the employment shall not be compensable, except  
9 where the diseases follow as an incident of an occupational  
10 disease as defined in this section. The disease need not to  
11 have been foreseen or expected but after its contraction it  
12 must appear to have had its origin in a risk connected with  
13 the employment and to have flowed from that source as a  
14 rational consequence.

15           2. An injury or death by occupational disease is  
16 compensable only if the occupational exposure was the  
17 prevailing factor in causing both the resulting medical  
18 condition and disability. The "prevailing factor" is  
19 defined to be the primary factor, in relation to any other  
20 factor, causing both the resulting medical condition and  
21 disability. Ordinary, gradual deterioration, or progressive

22 degeneration of the body caused by aging or by the normal  
23 activities of day-to-day living shall not be compensable.

24 3. An injury due to repetitive motion is recognized as  
25 an occupational disease for purposes of this chapter. An  
26 occupational disease due to repetitive motion is compensable  
27 only if the occupational exposure was the prevailing factor  
28 in causing both the resulting medical condition and  
29 disability. The "prevailing factor" is defined to be the  
30 primary factor, in relation to any other factor, causing  
31 both the resulting medical condition and disability.

32 Ordinary, gradual deterioration, or progressive degeneration  
33 of the body caused by aging or by the normal activities of  
34 day-to-day living shall not be compensable. **The exposure to**  
35 **injury must arise out of and in the course of the employment**  
36 **as defined under subsection 3 of section 287.020.**

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

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

51 6. Disease of the lungs or respiratory tract,  
52 hypotension, hypertension, or disease of the heart or  
53 cardiovascular system, including carcinoma, may be



54 recognized as occupational diseases for the purposes of this  
55 chapter and are defined to be disability due to exposure to  
56 smoke, gases, carcinogens, inadequate oxygen, of paid  
57 firefighters of a paid fire department or paid police  
58 officers of a paid police department certified under chapter  
59 590 if a direct causal relationship is established, or  
60 psychological stress of firefighters of a paid fire  
61 department or paid peace officers of a police department who  
62 are certified under chapter 590 if a direct causal  
63 relationship is established.

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

68 8. With regard to occupational disease due to  
69 repetitive motion, if the exposure to the repetitive motion  
70 which is found to be the cause of the injury is for a period  
71 of less than three months and the evidence demonstrates that  
72 the exposure to the repetitive motion with the immediate  
73 prior employer was the prevailing factor in causing the  
74 injury, the prior employer shall be liable for such  
75 occupational disease.

76 9. (1) (a) Posttraumatic stress disorder (PTSD), as  
77 described in the Diagnostic and Statistical Manual of Mental  
78 Health Disorders, Fifth Edition, published by the American  
79 Psychiatric Association, (DSM-5) is recognized as a  
80 compensable occupational disease for purposes of this  
81 chapter when diagnosed in a first responder, as that term is  
82 defined under section 67.145.

83 (b) Benefits payable to a first responder under this  
84 section shall not require a physical injury to the first  
85 responder, and are not subject to any preexisting PTSD.

86 (c) Benefits payable to a first responder under this  
87 section are compensable only if demonstrated by clear and  
88 convincing evidence that PTSD has resulted from the course  
89 and scope of employment, and the first responder is examined  
90 and diagnosed with PTSD by an authorized treating physician,  
91 due to the first responder experiencing one of the following  
92 qualifying events:

93 a. Seeing for oneself a deceased minor;

94 b. Witnessing directly the death of a minor;

95 c. Witnessing directly the injury to a minor who  
96 subsequently died prior to or upon arrival at a hospital  
97 emergency department, participating in the physical  
98 treatment of, or manually transporting, an injured minor who  
99 subsequently died prior to or upon arrival at a hospital  
100 emergency department;

101 d. Seeing for oneself a person who has suffered  
102 serious physical injury of a nature that shocks the  
103 conscience;

104 e. Witnessing directly a death, including suicide, due  
105 to serious physical injury; or homicide, including murder,  
106 mass killings, manslaughter, self-defense, misadventure, and  
107 negligence;

108 f. Witnessing directly an injury that results in  
109 death, if the person suffered serious physical injury that  
110 shocks the conscience;

111 g. Participating in the physical treatment of an  
112 injury, including attempted suicide, or manually  
113 transporting an injured person who suffered serious physical  
114 injury, if the injured person subsequently died prior to or  
115 upon arrival at a hospital emergency department; or

116 h. Involvement in an event that caused or may have  
117 caused serious injury or harm to the first responder or had

118 the potential to cause the death of the first responder,  
119 whether accidental or by an intentional act of another  
120 individual.

121 (2) The time for notice of injury or death in cases of  
122 compensable PTSD under this section is measured from  
123 exposure to one of the qualifying stressors listed in the  
124 DSM-5 criteria, or the diagnosis of the disorder, whichever  
125 is later. Any claim for compensation for such injury shall  
126 be properly noticed within fifty-two weeks after the  
127 qualifying exposure, or the diagnosis of the disorder,  
128 whichever is later.

287.120. 1. Every employer subject to the provisions  
2 of this chapter shall be liable, irrespective of negligence,  
3 to furnish compensation under the provisions of this chapter  
4 for personal injury or death of the employee by accident or  
5 occupational disease arising out of and in the course of the  
6 employee's employment. Any employee of such employer shall  
7 not be liable for any injury or death for which compensation  
8 is recoverable under this chapter and every employer and  
9 employees of such employer shall be released from all other  
10 liability whatsoever, whether to the employee or any other  
11 person, except that an employee shall not be released from  
12 liability for injury or death if the employee engaged in an  
13 affirmative negligent act that purposefully and dangerously  
14 caused or increased the risk of injury. The term "accident"  
15 as used in this section shall include, but not be limited  
16 to, injury or death of the employee caused by the unprovoked  
17 violence or assault against the employee by any person.

18 2. The rights and remedies herein granted to an  
19 employee shall exclude all other rights and remedies of the  
20 employee, the employee's spouse, parents, personal  
21 representatives, dependents, heirs or next kin, at common

22 law or otherwise, on account of such injury or death by  
23 accident or occupational disease, except such rights and  
24 remedies as are not provided for by this chapter.

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

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

35 5. Where the injury is caused by the failure of the  
36 employee to use safety devices where provided by the  
37 employer, or from the employee's failure to obey any  
38 reasonable rule adopted by the employer for the safety of  
39 employees, the [compensation and death] **indemnity** benefit  
40 provided for herein shall be reduced at least twenty-five  
41 but not more than fifty percent; provided, that it is shown  
42 that the employee had actual knowledge of the rule so  
43 adopted by the employer; and provided, further, that the  
44 employer had, prior to the injury, made a reasonable effort  
45 to cause his or her employees to use the safety device or  
46 devices and to obey or follow the rule so adopted for the  
47 safety of the employees.

48 6. (1) Where the employee fails to obey any rule or  
49 policy adopted by the employer relating to a drug-free  
50 workplace or the use of alcohol or nonprescribed controlled  
51 drugs in the workplace, the [compensation and death]  
52 **indemnity** benefit provided for herein shall be reduced fifty

53 percent if the injury was sustained in conjunction with the  
54 use of alcohol or nonprescribed controlled drugs.

55 (2) If, however, the use of alcohol or nonprescribed  
56 controlled drugs in violation of the employer's rule or  
57 policy is the proximate cause of the injury, then the  
58 benefits or compensation otherwise payable under this  
59 chapter for death or disability shall be forfeited.

60 (3) The voluntary use of alcohol to the percentage of  
61 blood alcohol sufficient under Missouri law to constitute  
62 legal intoxication shall give rise to a rebuttable  
63 presumption that the voluntary use of alcohol under such  
64 circumstances was the proximate cause of the injury. A  
65 preponderance of the evidence standard shall apply to rebut  
66 such presumption. An employee's refusal to take a test for  
67 alcohol or a nonprescribed controlled substance, as defined  
68 by section 195.010, at the request of the employer shall  
69 result in the forfeiture of benefits under this chapter if  
70 the employer had sufficient cause to suspect use of alcohol  
71 or a nonprescribed controlled substance by the claimant or  
72 if the employer's policy clearly authorizes post-injury  
73 testing.

74 (4) Any positive test result for a nonprescribed  
75 controlled drug or the metabolites of such drug from an  
76 employee shall give rise to a rebuttable presumption, which  
77 may be rebutted by a preponderance of evidence, that the  
78 tested nonprescribed controlled drug was in the employee's  
79 system at the time of the accident or injury and that the  
80 injury was sustained in conjunction with the use of the  
81 tested nonprescribed controlled drug if:

82 (a) The initial testing was administered within twenty-  
83 four hours of the accident or injury;

84 (b) Notice was given to the employee of the test  
85 results within fourteen calendar days of the insurer or  
86 group self-insurer receiving actual notice of the  
87 confirmatory test results;

88 (c) The employee was given an opportunity to perform a  
89 second test upon the original sample; and

90 (d) The initial or any subsequent testing that forms  
91 the basis of the presumption was confirmed by mass  
92 spectrometry using generally accepted medical or forensic  
93 testing procedures.

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

102 (1) The employee was directly ordered by the employer  
103 to participate in such recreational activity or program; **or**

104 (2) [The employee was paid wages or travel expenses  
105 while participating in such recreational activity or  
106 program; or

107 (3)] The injury from such recreational activity or  
108 program occurs on the employer's premises due to an unsafe  
109 condition and the employer had actual knowledge of the  
110 employee's participation in the recreational activity or  
111 program and of the unsafe condition of the premises and  
112 failed to either curtail the recreational activity or  
113 program or cure the unsafe condition.

114 8. Mental injury resulting from work-related stress  
115 does not arise out of and in the course of the employment,

116 unless it is demonstrated that the stress is work related  
117 and was extraordinary and unusual, **by comparison with**  
118 **employees working in the same position.** The amount of work  
119 stress shall be measured by objective standards and actual  
120 events.

121 9. A mental injury is not considered to arise out of  
122 and in the course of the employment if it resulted from any  
123 disciplinary action, work evaluation, job transfer, layoff,  
124 demotion, termination or any similar action taken in good  
125 faith by the employer.

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

287.127. 1. Beginning January 1, 1993, all employers  
2 shall post a notice at their place of employment, in a  
3 sufficient number of places on the premises to assure that  
4 such notice will reasonably be seen by all employees. An  
5 employer for whom services are performed by individuals who  
6 may not reasonably be expected to see a posted notice shall  
7 notify each such employee in writing of the contents of such  
8 notice. The notice shall include:

9 (1) That the employer is operating under and subject  
10 to the provisions of the Missouri workers' compensation law;

11 (2) That employees must report all injuries  
12 immediately to the employer by advising the employer  
13 personally, the employer's designated individual or the  
14 employee's immediate boss, supervisor or foreman and that  
15 the employee may lose the right to receive compensation if  
16 the injury or illness is not reported within thirty days or  
17 in the case of occupational illness or disease, within  
18 thirty days of [the time he or she is reasonably aware of

work relatedness of the injury or illness] **when medically  
advised of the contracture of an occupational disease;**

employees who fail to notify their employer within thirty days may jeopardize their ability to receive compensation, and any other benefits under this chapter;

(3) The name, address and telephone number of the insurer, if insured. If self-insured, the name, address and telephone number of the employer's designated individual responsible for reporting injuries or the name, address and telephone number of the adjusting company or service company designated by the employer to handle workers' compensation matters;

(4) The name, address and the toll-free telephone number of the division of workers' compensation;

(5) That the employer will supply, upon request, additional information provided by the division of workers' compensation;

(6) That a fraudulent action by the employer, employee or any other person is unlawful.

2. The division of workers' compensation shall develop the notice to be posted, distribute such notice free of charge to employers and insurers upon request, and publish the notice on the website of the department of labor and industrial relations. Failure to request such notice does not relieve the employer of its obligation to post the notice. If the employer carries workers' compensation insurance, the carrier shall provide the notice, in paper or electronic format, to the insured within thirty days of the insurance policy's inception date. A carrier who elects to provide the notice in electronic format shall direct the insured to the notice available on the website of the department of labor and industrial relations.



51           3. Any employer who willfully violates the provisions  
52 of this section shall be guilty of a class A misdemeanor and  
53 shall be punished by a fine of not less than fifty dollars  
54 nor more than one thousand dollars, or by imprisonment in  
55 the county jail for not more than six months or by both such  
56 fine and imprisonment, and each such violation or each day  
57 such violation continues shall be deemed a separate offense.

          287.140. 1. In addition to all other compensation  
2 paid to the employee under this section, the employee shall  
3 receive and the employer shall provide such medical,  
4 surgical, chiropractic, and hospital treatment, including  
5 nursing, custodial, ambulance and medicines, as may  
6 reasonably be required after the injury or disability, to  
7 cure and relieve from the effects of the injury. If the  
8 employee desires, he shall have the right to select his own  
9 physician, surgeon, or other such requirement at his own  
10 expense. Where the requirements are furnished by a public  
11 hospital or other institution, payment therefor shall be  
12 made to the proper authorities. Regardless of whether the  
13 health care provider is selected by the employer or is  
14 selected by the employee at the employee's expense, the  
15 health care provider shall have the affirmative duty to  
16 communicate fully with the employee regarding the nature of  
17 the employee's injury and recommended treatment exclusive of  
18 any evaluation for a permanent disability rating. Failure  
19 to perform such duty to communicate shall constitute a  
20 disciplinary violation by the provider subject to the  
21 provisions of chapter 620. When an employee is required to  
22 submit to medical examinations or necessary medical  
23 treatment at a place outside of the local or metropolitan  
24 area from the employee's principal place of employment, the  
25 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.

2. 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. **The division shall establish by rule a schedule of fees for any service provided pursuant to this chapter.** All fees and charges under this chapter shall be [fair and reasonable, shall be] **in accordance with the fee schedule promulgated by the division and** 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] **that allowed pursuant to the fee schedule promulgated by the division.** 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. 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. Any [application for payment of additional reimbursement, as such term is used in 8 CSR 50- 2.030, as amended,] **medical fee dispute** shall be filed not later than:

(1) Two years from the date the first notice of dispute of the medical charge was received by the health care provider if such services were rendered before July 1, 2013; [and]

(2) One year from the date the first notice of dispute of the medical charge was received by the health care provider if such services were rendered after July 1, 2013; **and**

(3) **Two years from the date of service, when no payment has been made.**

90 Notice shall be presumed to occur no later than five  
91 business days after transmission by certified United States  
92 mail.

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

102 6. The testimony of any physician or chiropractic  
103 physician who treated the employee shall be admissible in  
104 evidence in any proceedings for compensation under this  
105 chapter, subject to all of the provisions of section 287.210.

106 7. Every hospital or other person furnishing the  
107 employee with medical aid shall permit its record to be  
108 copied by and shall furnish full information to the division  
109 or the commission, the employer, the employee or his  
110 dependents and any other party to any proceedings for  
111 compensation under this chapter, and certified copies of the  
112 records shall be admissible in evidence in any such  
113 proceedings.

114 8. The employer may be required by the division or the  
115 commission to furnish an injured employee with artificial  
116 legs, arms, hands, surgical orthopedic joints, or eyes, or  
117 braces, as needed, for life whenever the division or the  
118 commission shall find that the injured employee may be  
119 partially or wholly relieved of the effects of a permanent  
120 injury by the use thereof. [The director of the division  
121 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. 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. 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. 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. Violation of subsection 11 of this section is a class A misdemeanor.

13. (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.

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

198           (4) If a hospital, physician or other health care  
199 provider or a debt collector on behalf of such hospital,  
200 physician or other health care provider pursues any action  
201 to collect from an employee after such notice is properly  
202 given, the employee shall have a cause of action against the  
203 hospital, physician or other health care provider for actual  
204 damages sustained plus up to one thousand dollars in  
205 additional damages, costs and reasonable attorney's fees.

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

213           (6) A hospital, physician or other health care  
214 provider whose services have been authorized in advance by  
215 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.

14. The employer may allow or require an employee to use any of the employee's accumulated paid 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 section.

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]~~ **have a subrogation lien** 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



17 death of the employee, the employer shall have a subrogation  
18 lien on any recovery and shall receive or have credit for  
19 sums paid or payable under this chapter to any of the  
20 dependents of the deceased employee to the extent of the  
21 settlement or recovery by such dependents for the wrongful  
22 death. Recovery by the employer and credit for future  
23 installments shall be computed using the provisions of  
24 subsection 3 of this section relating to comparative fault  
25 of the employee.

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

47       (1) The total amount paid to the employee or his  
48 dependents shall be treated as an advance payment if there

49 is no finding of comparative fault on the part of the  
50 employee; or

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

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

64 5. No construction design professional who is retained  
65 to perform professional services on a construction project  
66 or any employee of a construction design professional who is  
67 assisting or representing the construction design  
68 professional in the performance of professional services on  
69 the site of the construction project shall be liable for any  
70 injury resulting from the employer's failure to comply with  
71 safety standards on a construction project for which  
72 compensation is recoverable under the workers' compensation  
73 law, unless responsibility for safety practices is  
74 specifically assumed by contract. The immunity provided by  
75 this subsection to any construction design professional  
76 shall not apply to the negligent preparation of design plans  
77 or specifications.

78 6. Any provision in any contract or subcontract, where  
79 one party is an employer in the construction group of code  
80 classifications, which purports to waive subrogation rights

81 provided under this section in anticipation of a future  
82 injury or death is hereby declared against public policy and  
83 void. Each contract of insurance for workers' compensation  
84 shall require the insurer to diligently pursue all  
85 subrogation rights of the employer and shall require the  
86 employer to fully cooperate with the insurer in pursuing  
87 such recoveries, except that the employer may enter into  
88 compromise agreements with an insurer in lieu of the insurer  
89 pursuing subrogation against another party. The amount of  
90 any subrogation recovery by an insurer shall be credited  
91 against the amount of the actual paid losses in the  
92 determination of such employer's experience modification  
93 factor within forty-five days of the collection of such  
94 amount.

95 [7. Notwithstanding any other provision of this  
96 section, when a third person or party is liable to the  
97 employee, to the dependents of an employee, or to any person  
98 eligible to sue for the employee's wrongful death as  
99 provided is section 537.080 in a case where the employee  
100 suffers or suffered from an occupational disease due to  
101 toxic exposure and the employee, dependents, or persons  
102 eligible to sue for wrongful death are compensated under  
103 this chapter, in no case shall the employer then be  
104 subrogated to the rights of an employee, dependents, or  
105 persons eligible to sue for wrongful death against such  
106 third person or party when the occupational disease due to  
107 toxic exposure arose from the employee's work for employer.]

287.210. 1. After an employee has received an injury  
2 he shall from time to time thereafter during disability  
3 submit to reasonable medical examination at the request of  
4 the employer, the employer's insurer, the commission, the  
5 division, an administrative law judge, or the attorney

6 general on behalf of the second injury fund if the employer  
7 has not obtained a medical examination report, the time and  
8 place of which shall be fixed with due regard to the  
9 convenience of the employee and his physical condition and  
10 ability to attend. The employee may have his own physician  
11 present, and if the employee refuses to submit to the  
12 examination, or in any way obstructs it, his right to  
13 compensation shall be forfeited during such period unless in  
14 the opinion of the commission the circumstances justify the  
15 refusal or obstruction.

16 2. The commission, the division or administrative law  
17 judge shall, when deemed necessary, appoint a duly qualified  
18 impartial physician to examine the injured employee, and any  
19 physician so chosen, if he accepts the appointment, shall  
20 promptly make the examination requested and make a complete  
21 medical report to the commission or the division in such  
22 duplication as to provide all parties with copies thereof.  
23 The physician's fee shall be [fair and reasonable, as  
24 provided in] **subject to** subsection 3 of section 287.140, and  
25 the fee and other reasonable costs of the impartial  
26 examination may be paid as other costs under this chapter.  
27 If all the parties shall have had reasonable access thereto,  
28 the report of the physician shall be admissible in evidence.

29 3. The testimony of any physician who treated or  
30 examined the injured employee shall be admissible in  
31 evidence in any proceedings for compensation under this  
32 chapter, but only if the medical report of the physician has  
33 been made available to all parties as in this section  
34 provided. Immediately upon receipt of notice from the  
35 division or the commission setting a date for hearing of a  
36 case in which the nature and extent of an employee's  
37 disability is to be determined, the parties or their

attorneys shall arrange, without charge or costs, each to the other, for an exchange of all medical reports, including those made both by treating and examining physician or physicians, to the end that the parties may be commonly informed of all medical findings and opinions. The exchange of medical reports shall be made at least seven days before the date set for the hearing and failure of any party to comply may be grounds for asking for and receiving a continuance, upon proper showing by the party to whom the medical reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical report of the treating or examining physician at least seven days before such physician's deposition or personal testimony at the hearing, as in this section provided, upon the objection of the party who was not provided with the medical report, the physician shall not be permitted to testify at that hearing or by medical deposition.

4. Upon request, an administrative law judge, the division, or the commission shall be provided with a copy of any medical report.

5. As used in this chapter the terms "physician's report" and "medical report" mean the report of any physician made on any printed form authorized by the division or the commission or any complete medical report. As used in this chapter the term "complete medical report" means the report of a physician giving the physician's qualifications and the patient's history, complaints, details of the findings of any and all laboratory, X-ray and all other technical examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage of permanent partial disability, if any. An

69 element or elements of a complete medical report may be met  
70 by the physician's records.

71 6. Upon the request of a party, the physician or  
72 physicians who treated or are treating the injured employee  
73 shall be required to furnish to the parties a rating and  
74 complete medical report on the injured employee, at the  
75 expense of the party selecting the physician, along with a  
76 complete copy of the physician's clinical record including  
77 copies of any records and reports received from other health  
78 care providers.

79 7. The testimony of a treating or examining physician  
80 may be submitted in evidence on the issues in controversy by  
81 a complete medical report and shall be admissible without  
82 other foundational evidence subject to compliance with the  
83 following procedures. The party intending to submit a  
84 complete medical report in evidence shall give notice at  
85 least sixty days prior to the hearing to all parties and  
86 shall provide reasonable opportunity to all parties to  
87 obtain cross-examination testimony of the physician by  
88 deposition. The notice shall include a copy of the report  
89 and all the clinical and treatment records of the physician  
90 including copies of all records and reports received by the  
91 physician from other health care providers. The party  
92 offering the report must make the physician available for  
93 cross-examination testimony by deposition not later than  
94 seven days before the matter is set for hearing, and each  
95 cross-examiner shall compensate the physician for the  
96 portion of testimony obtained in an amount not to exceed a  
97 rate of reasonable compensation taking into consideration  
98 the specialty practiced by the physician. Cross-examination  
99 testimony shall not bind the cross-examining party. Any  
100 testimony obtained by the offering party shall be at that

party's expense on a proportional basis, including the deposition fee of the physician. Upon request of any party, the party offering a complete medical report in evidence must also make available copies of X rays or other diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report by providing written objections to the offering party stating the grounds for the dispute, and at the request of any party, the administrative law judge shall rule upon such objections upon pretrial hearing whether the report meets the requirements of a complete medical report and upon the admissibility of the report or portions thereof. If no objections are filed the report is admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the parties from agreeing to admit medical reports or records by consent.

8. Certified copies of the proceedings before any coroner holding an inquest over the body of any employee receiving an injury in the course of his employment resulting in death shall be admissible in evidence in any proceedings for compensation under this chapter, and it shall be the duty of the coroner to give notice of the inquest to the employer and the dependents of the deceased employee, who shall have the right to cross-examine the witness.

9. The division or the commission may in its discretion in extraordinary cases order a postmortem examination and for that purpose may also order a body exhumed.

287.220. 1. There is hereby created in the state treasury a special fund to be known as the "Second Injury

3 Fund" created exclusively for the purposes as in this  
4 section provided and for special weekly benefits in  
5 rehabilitation cases as provided in section 287.141.  
6 Maintenance of the second injury fund shall be as provided  
7 by section 287.710. The state treasurer shall be the  
8 custodian of the second injury fund which shall be deposited  
9 the same as are state funds and any interest accruing  
10 thereon shall be added thereto. The fund shall be subject  
11 to audit the same as state funds and accounts and shall be  
12 protected by the general bond given by the state treasurer.  
13 Upon the requisition of the director of the division of  
14 workers' compensation, warrants on the state treasurer for  
15 the payment of all amounts payable for compensation and  
16 benefits out of the second injury fund shall be issued.

17 2. All cases of permanent disability where there has  
18 been previous disability due to injuries occurring prior to  
19 January 1, 2014, shall be compensated as provided in this  
20 subsection. Compensation shall be computed on the basis of  
21 the average earnings at the time of the last injury. If any  
22 employee who has a preexisting permanent partial disability  
23 whether from compensable injury or otherwise, of such  
24 seriousness as to constitute a hindrance or obstacle to  
25 employment or to obtaining reemployment if the employee  
26 becomes unemployed, and the preexisting permanent partial  
27 disability, if a body as a whole injury, equals a minimum of  
28 fifty weeks of compensation or, if a major extremity injury  
29 only, equals a minimum of fifteen percent permanent partial  
30 disability, according to the medical standards that are used  
31 in determining such compensation, receives a subsequent  
32 compensable injury resulting in additional permanent partial  
33 disability so that the degree or percentage of disability,  
34 in an amount equal to a minimum of fifty weeks compensation,



35 if a body as a whole injury or, if a major extremity injury  
36 only, equals a minimum of fifteen percent permanent partial  
37 disability, caused by the combined disabilities is  
38 substantially greater than that which would have resulted  
39 from the last injury, considered alone and of itself, and if  
40 the employee is entitled to receive compensation on the  
41 basis of the combined disabilities, the employer at the time  
42 of the last injury shall be liable only for the degree or  
43 percentage of disability which would have resulted from the  
44 last injury had there been no preexisting disability. After  
45 the compensation liability of the employer for the last  
46 injury, considered alone, has been determined by an  
47 administrative law judge or the commission, the degree or  
48 percentage of employee's disability that is attributable to  
49 all injuries or conditions existing at the time the last  
50 injury was sustained shall then be determined by that  
51 administrative law judge or by the commission and the degree  
52 or percentage of disability which existed prior to the last  
53 injury plus the disability resulting from the last injury,  
54 if any, considered alone, shall be deducted from the  
55 combined disability, and compensation for the balance, if  
56 any, shall be paid out of a special fund known as the second  
57 injury fund, hereinafter provided for. If the previous  
58 disability or disabilities, whether from compensable injury  
59 or otherwise, and the last injury together result in total  
60 and permanent disability, the minimum standards under this  
61 subsection for a body as a whole injury or a major extremity  
62 injury shall not apply and the employer at the time of the  
63 last injury shall be liable only for the disability  
64 resulting from the last injury considered alone and of  
65 itself; except that if the compensation for which the  
66 employer at the time of the last injury is liable is less

67 than the compensation provided in this chapter for permanent  
68 total disability, then in addition to the compensation for  
69 which the employer is liable and after the completion of  
70 payment of the compensation by the employer, the employee  
71 shall be paid the remainder of the compensation that would  
72 be due for permanent total disability under section 287.200  
73 out of the second injury fund.

74 3. (1) All claims against the second injury fund for  
75 injuries occurring after January 1, 2014, and all claims  
76 against the second injury fund involving a subsequent  
77 compensable injury which is an occupational disease filed  
78 after January 1, 2014, shall be compensated as provided in  
79 this subsection.

80 (2) No claims for permanent partial disability  
81 occurring after January 1, 2014, shall be filed against the  
82 second injury fund. Claims for permanent total disability  
83 under section 287.200 against the second injury fund shall  
84 be compensable only when the following conditions are met:

85 (a) a. An employee has a [medically documented]  
86 preexisting disability equaling a minimum of fifty weeks of  
87 permanent partial disability compensation according to the  
88 medical standards that are used in determining such  
89 compensation which is:

90 (i) A direct result of active military duty in any  
91 branch of the United States Armed Forces; or

92 (ii) A direct result of a compensable injury as  
93 defined in section 287.020 **or 287.067**; or

94 (iii) Not a compensable injury, but such preexisting  
95 disability directly and significantly aggravates or  
96 accelerates the subsequent work-related injury and shall not  
97 include unrelated preexisting injuries or conditions that do

not aggravate or accelerate the subsequent work-related injury; or

(iv) A preexisting permanent partial disability of an extremity, loss of eyesight in one eye, or loss of hearing in one ear, when there is a subsequent compensable work-related injury as set forth in subparagraph b of the opposite extremity, loss of eyesight in the other eye, or loss of hearing in the other ear; and

b. Such employee thereafter sustains a subsequent compensable work-related injury that, when combined with the preexisting disability, as set forth in items (i), (ii), (iii), or (iv) of subparagraph a. of this paragraph, results in a permanent total disability as defined under this chapter; or

(b) An employee is employed in a sheltered workshop as established in sections 205.968 to 205.972 or sections 178.900 to 178.960 and such employee thereafter sustains a compensable work-related injury that, when combined with the preexisting disability, results in a permanent total disability as defined under this chapter.

(3) When an employee is entitled to compensation as provided in this subsection, the employer at the time of the last work-related injury shall only be liable for the disability resulting from the subsequent work-related injury considered alone and of itself.

**(4) If the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been**

determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund.

(5) Compensation for benefits payable under this subsection shall be based on the employee's compensation rate calculated under section 287.250.

4. (1) In all cases in which a recovery against the second injury fund is sought for permanent partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall be named as a party, and shall be entitled to defend against the claim.

(2) The state treasurer, with the advice and consent of the attorney general of Missouri, may enter into compromise settlements as contemplated by section 287.390, or agreed statements of fact that would affect the second injury fund. All awards for permanent partial disability, permanent total disability, or death affecting the second injury fund shall be subject to the provisions of this chapter governing review and appeal.

(3) For all claims filed against the second injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where an actual or potential conflict of interest exists, to provide legal services as may be required in all claims made

for recovery against the fund. Any legal expenses incurred by the attorney general's office in the handling of such claims, including, but not limited to, medical examination fees incurred under sections 287.210 and the expenses provided for under section 287.140, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be contingent upon annual appropriations made by the general assembly, from the fund, to the attorney general's office for this specific purpose.

5. If more than one injury in the same employment causes concurrent temporary disabilities, compensation shall be payable only for the longest and largest paying disability.

6. If more than one injury in the same employment causes concurrent and consecutive permanent partial disability, compensation payments for each subsequent disability shall not begin until the end of the compensation period of the prior disability.

7. If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses incurred relating to claims for injuries occurring prior to January 1, 2014, to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer consistent with subsection 3 of section 287.140, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses incurred relating to a death occurring prior to January 1, 2014, in the manner

required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same defenses to such claims as would the uninsured employer. Any funds received by the employee or the employee's dependents, through civil or other action, must go towards reimbursement of the second injury fund, for all payments made to the employee, the employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri shall bring suit in the circuit court of the county in which the accident occurred against any employer not covered by this chapter as required in section 287.280.

8. Every year the second injury fund shall have an actuarial study made to determine the solvency of the fund taking into consideration any existing balance carried forward from a previous year, appropriate funding level of the fund, and forecasted expenditures from the fund. The first actuarial study shall be completed prior to July 1, 2014. The expenses of such actuarial studies shall be paid out of the fund for the support of the division of workers' compensation.

9. The director of the division of workers' compensation shall maintain the financial data and records concerning the fund for the support of the division of workers' compensation and the second injury fund. The division shall also compile and report data on claims made pursuant to subsection 11 of this section. The attorney general shall provide all necessary information to the division for this purpose.

225           10. All claims for fees and expenses filed against the  
226 second injury fund and all records pertaining thereto shall  
227 be open to the public.

228           11. Any employee who at the time a compensable work-  
229 related injury is sustained prior to January 1, 2014, is  
230 employed by more than one employer, the employer for whom  
231 the employee was working when the injury was sustained shall  
232 be responsible for wage loss benefits applicable only to the  
233 earnings in that employer's employment and the injured  
234 employee shall be entitled to file a claim against the  
235 second injury fund for any additional wage loss benefits  
236 attributed to loss of earnings from the employment or  
237 employments where the injury did not occur, up to the  
238 maximum weekly benefit less those benefits paid by the  
239 employer in whose employment the employee sustained the  
240 injury. The employee shall be entitled to a total benefit  
241 based on the total average weekly wage of such employee  
242 computed according to subsection 8 of section 287.250. The  
243 employee shall not be entitled to a greater rate of  
244 compensation than allowed by law on the date of the injury.  
245 The employer for whom the employee was working where the  
246 injury was sustained shall be responsible for all medical  
247 costs incurred in regard to that injury.

248           12. No compensation shall be payable from the second  
249 injury fund if the employee files a claim for compensation  
250 under the workers' compensation law of another state with  
251 jurisdiction over the employee's injury or accident or  
252 occupational disease.

253           13. Notwithstanding the requirements of section  
254 287.470, the life payments to an injured employee made from  
255 the fund shall be suspended when the employee is able to  
256 obtain suitable gainful employment or be self-employed in

view of the nature and severity of the injury. The division shall promulgate rules setting forth a reasonable standard means test to determine if such employment warrants the suspension of benefits.

14. All awards issued under this chapter affecting the second injury fund shall be subject to the provisions of this chapter governing review and appeal.

15. The division shall pay any liabilities of the fund in the following priority:

(1) Expenses related to the legal defense of the fund under subsection 4 of this section;

(2) Permanent total disability awards in the order in which claims are settled or finally adjudicated;

(3) Permanent partial disability awards in the order in which such claims are settled or finally adjudicated;

(4) Medical expenses incurred prior to July 1, 2012, under subsection 7 of this section; and

(5) Interest on unpaid awards.

Such liabilities shall be paid to the extent the fund has a positive balance. Any unpaid amounts shall remain an ongoing liability of the fund until satisfied.

16. Post-award interest for the purpose of second injury fund claims shall be set at the adjusted rate of interest established by the director of revenue pursuant to section 32.065 or five percent, whichever is greater.

17. Notwithstanding the provisions of subsection 15 of this section to the contrary, the division may pay from the second injury fund any of the following second injury fund liabilities prior to those liabilities listed under subsection 15 of this section:



287           (1) All death benefits incurred under subsection 7 of  
288 this section relating to claims for deaths occurring prior  
289 to January 1, 2014, consistent with a temporary or final  
290 award; and

291           (2) Ongoing medical expenses, but not past medical  
292 expenses, under subsection 7 of this section relating to  
293 claims for injuries occurring prior to January 1, 2014,  
294 consistent with a temporary or final award that includes  
295 future medical benefits.

          287.240. If the injury causes death, either with or  
2 without disability, the compensation therefor shall be as  
3 provided in this section:

4           (1) In all cases the employer shall pay direct to the  
5 persons furnishing the same the reasonable expense of the  
6 burial of the deceased employee not exceeding five thousand  
7 dollars. But no person shall be entitled to compensation  
8 for the burial expenses of a deceased employee unless he or  
9 she has furnished the same by authority of the widow or  
10 widower, the nearest relative of the deceased employee in  
11 the county of his or her death, his or her personal  
12 representative, or the employer, who shall have the right to  
13 give the authority in the order named. All fees and charges  
14 under this section shall be fair and reasonable, shall be  
15 subject to regulation by the division or the commission and  
16 shall be limited to such as are fair and reasonable for  
17 similar service to persons of a like standard of living.  
18 The division or the commission shall also have jurisdiction  
19 to hear and determine all disputes as to the charges. If  
20 the deceased employee leaves no dependents, the death  
21 benefit in this subdivision provided shall be the limit of  
22 the liability of the employer under this chapter on account  
23 of the death, except as herein provided for burial expenses

24 and except as provided in section 287.140; provided that in  
25 all cases when the employer admits or does not deny  
26 liability for the burial expense, it shall be paid within  
27 thirty days after written notice, that the service has been  
28 rendered, has been delivered to the employer. The notice  
29 may be sent by registered mail, return receipt requested, or  
30 may be made by personal delivery;

31 (2) The employer shall also pay to the dependents of  
32 the employee a death benefit based on the employee's average  
33 weekly [earnings during the year immediately preceding the  
34 injury that results in the death of the employee,] **wage** as  
35 provided in section 287.250. The amount of compensation for  
36 death, which shall be paid in installments in the same  
37 manner that compensation is required to be paid under this  
38 chapter, shall be computed as follows:

39 (a) If the injury which caused the death occurred on  
40 or after September 28, 1983, but before September 28, 1986,  
41 the weekly compensation shall be an amount equal to sixty-  
42 six and two-thirds percent of the employee's average weekly  
43 earnings during the year immediately preceding the injury;  
44 provided that the weekly compensation paid under this  
45 paragraph shall not exceed an amount equal to seventy  
46 percent of the state average weekly wage, as such wage is  
47 determined by the division of employment security, as of the  
48 July first immediately preceding the date of injury;

49 (b) If the injury which caused the death occurred on  
50 or after September 28, 1986, but before August 28, 1990, the  
51 weekly compensation shall be an amount equal to sixty-six  
52 and two-thirds percent of the employee's average weekly  
53 earnings during the year immediately preceding the injury;  
54 provided that the weekly compensation paid under this  
55 paragraph shall not exceed an amount equal to seventy-five

56 percent of the state average weekly wage, as such wage is  
57 determined by the division of employment security, as of the  
58 July first immediately preceding the date of injury;

59 (c) If the injury which caused the death occurred on  
60 or after August 28, 1990, but before August 28, 1991, the  
61 weekly compensation shall be an amount equal to sixty-six  
62 and two-thirds percent of the injured employee's average  
63 weekly earnings as of the date of the injury; provided that  
64 the weekly compensation paid under this paragraph shall not  
65 exceed an amount equal to one hundred percent of the state  
66 average weekly wage;

67 (d) If the injury which caused the death occurred on  
68 or after August 28, 1991, the weekly compensation shall be  
69 an amount equal to sixty-six and two-thirds percent of the  
70 injured employee's average weekly earnings as of the date of  
71 the injury; provided that the weekly compensation paid under  
72 this paragraph shall not exceed an amount equal to one  
73 hundred five percent of the state average weekly wage;

74 (e) If the injury which caused the death occurred on  
75 or after September 28, 1981, the weekly compensation shall  
76 in no event be less than forty dollars per week;

77 (3) The word "dependent" as used in this chapter shall  
78 mean:

79 (a) A wife upon a husband with whom she lives or who  
80 is legally liable for her support, and a husband upon a wife  
81 with whom he lives or who is legally liable for his support;  
82 provided that on the death or remarriage of a widow or  
83 widower, the death benefit shall cease unless there be other  
84 dependents entitled to any death benefits under this  
85 chapter. In the event of remarriage, a lump sum payment  
86 equal in amount to the benefits due for a period of two  
87 years shall be paid to the widow or widower. Thereupon the

88 periodic death benefits shall cease unless there are other  
89 dependents entitled to any death benefit under this chapter,  
90 in which event the periodic benefits to which such widow or  
91 widower would have been entitled had he or she not died or  
92 remarried shall be divided among such other dependents and  
93 paid to them during their period of entitlement under this  
94 chapter; or

95       (b) A natural, posthumous, or adopted child or  
96 children, whether legitimate or illegitimate, including any  
97 stepchild claimable by the deceased on his or her federal  
98 tax return at the time of injury, under the age of eighteen  
99 years, or over that age if physically or mentally  
100 incapacitated from wage earning, upon the parent legally  
101 liable for the support or with whom he, she, or they are  
102 living at the time of the death of the parent. In case  
103 there is a wife or a husband mentally or physically  
104 incapacitated from wage earning, dependent upon a wife or  
105 husband, and a child or more than one child thus dependent,  
106 the death benefit shall be divided among them in such  
107 proportion as may be determined by the commission after  
108 considering their ages and other facts bearing on the  
109 dependency. In all other cases questions of the degree of  
110 dependency shall be determined in accordance with the facts  
111 at the time of the injury, and in such other cases if there  
112 is more than one person wholly dependent the death benefit  
113 shall be divided equally among them. The payment of death  
114 benefits to a child or other dependent as provided in this  
115 paragraph shall cease when the dependent dies, attains the  
116 age of eighteen years, or becomes physically and mentally  
117 capable of wage earning over that age, or until twenty-two  
118 years of age if the child of the deceased is in attendance  
119 and remains as a full-time student in any accredited

educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his or her active duty in the Armed Forces, unless there are other dependents entitled to the death benefit under this chapter;

(4) The division or the commission may, in its discretion, order or award the share of compensation of any such child to be paid to the parent, grandparent, or other adult next of kin or conservator of the child for the latter's support, maintenance and education, which order or award upon notice to the parties may be modified from time to time by the commission in its discretion with respect to the person to whom shall be paid the amount of the order or award remaining unpaid at the time of the modification;

(5) The payments of compensation by the employer in accordance with the order or award of the division or the commission shall discharge the employer from all further obligations as to the compensation;

(6) All death benefits in this chapter shall be paid in installments in the same manner as provided for disability compensation;

(7) Every employer shall keep a record of the correct names and addresses of the dependents of each of his or her employees, and upon the death of an employee by accident arising out of and in the course of his or her employment shall so far as possible immediately furnish the division with such names and addresses;

151           (8) Dependents receiving death benefits under the  
152 provisions of this chapter shall annually report to the  
153 division as to marital status in the case of a widow or  
154 widower or age and physical or mental condition of a  
155 dependent child. The division shall provide forms for the  
156 making of such reports.

          287.250. 1. Except as otherwise provided for in this  
2 chapter, the method of computing an injured employee's  
3 average weekly earnings which will serve as the basis for  
4 compensation provided for in this chapter shall be as  
5 follows:

6           (1) If the wages are fixed by the week, the amount so  
7 fixed shall be the average weekly wage;

8           (2) If the wages are fixed by the month, the average  
9 weekly wage shall be the monthly wage so fixed multiplied by  
10 twelve and divided by fifty-two;

11           (3) If the wages are fixed by the year, the average  
12 weekly wage shall be the yearly wage fixed divided by fifty-  
13 two;

14           (4) If the wages were fixed by the day, hour, or by  
15 the output of the employee, the average weekly wage shall be  
16 computed by dividing by thirteen the wages earned while  
17 actually employed by the employer in each of the last  
18 thirteen calendar weeks immediately preceding the week in  
19 which the employee was injured or if actually employed by  
20 the employer for less than thirteen weeks, by the number of  
21 calendar weeks, or any portion of a week, during which the  
22 employee was actually employed by the employer. For  
23 purposes of computing the average weekly wage pursuant to  
24 this subdivision, absence of five regular or scheduled work  
25 days, even if not in the same calendar week, shall be  
26 considered as absence for a calendar week. If the employee

commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

(5) If the employee has been employed less than two calendar weeks immediately preceding the injury, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of the injury, except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon multiplied by the number of weekly hours scheduled shall be the employee's average weekly wage;

(6) If the hourly wage has not been fixed or cannot be ascertained, or the employee earned no wage, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees of the employer or any other employer;

(7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this subsection, an employee shall be considered to have been actually employed for only those weeks in which labor is actually performed by the employee for the employer and wages are actually paid by the employer as compensation for such labor;

**(8) For purposes of 8 CSR 50-2.010(8)(B), an allegation of the average weekly wage in a claim for compensation shall not be considered a statement of fact deemed admitted if an answer to the claim for compensation is not timely filed.**

2. For purposes of this section, the term "gross wages" includes, in addition to money payments for services rendered, the reasonable value of board, rent, housing,

lodging or similar advance received from the employer, except if such benefits continue to be provided during the period of the disability, then the value of such benefits shall not be considered in calculating the average weekly wage of the employee. The term "wages", as used in this section, includes the value of any gratuities received in the course of employment from persons other than the employer to the extent that such gratuities are reported for income tax purposes. "Wages", as used in this section, does not include fringe benefits such as retirement, pension, health and welfare, life insurance, training, Social Security or other employee or dependent benefit plan furnished by the employer for the benefit of the employee. Any wages paid to helpers or any money paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of his employment shall not be included in wages.

3. If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as a full-time or regular employee, but such computation shall not be based on less than thirty hours per week.

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in



91 such manner and by such method as, in the opinion of the  
92 division or the commission, based upon the exceptional facts  
93 presented, fairly determine such employee's average weekly  
94 wage.

95 5. In computing the compensation to be paid to an  
96 employee, who, before the injury for which the employee  
97 claims compensation, was disabled and drawing compensation  
98 under the provisions of this chapter, the compensation for  
99 each subsequent injury shall be apportioned according to the  
100 proportion of incapacity and disability caused by the  
101 respective injuries which the employee may have suffered.

102 6. For purposes of establishing a rate of compensation  
103 applicable only to permanent partial disability, permanent  
104 total disability and death benefits, pursuant to this  
105 chapter, the average weekly wage for an employee who is  
106 under the age of twenty-one years shall be adjusted to take  
107 into consideration the increased earning power of such  
108 employee until she or he attains the age of twenty-one years  
109 and the average weekly wage for an employee who is an  
110 apprentice or a trainee, and whose earnings would reasonably  
111 be expected to increase, shall be adjusted to reflect a  
112 level of expected increase, based upon completion of  
113 apprenticeship or traineeship, provided that such adjustment  
114 of the average weekly wage shall not consider expected  
115 increase for a period occurring more than three years after  
116 the date of the injury.

117 7. In all cases in which it is found by the division  
118 or the commission that the employer knowingly employed a  
119 minor in violation of the child labor laws of this state, a  
120 fifty percent additional compensation shall be allowed.

121 8. For an employee with multiple employments, as to  
122 the employee's entitlement to any temporary total or

temporary partial disability benefits only pursuant to subsection 9 of section 287.220, and for no other purposes, the employee's total average weekly wage shall be equal to the sum of the total of the average weekly wage computed separately for each employment pursuant to the provisions of this section to which the employee is unable to return because of this injury.

9. The parties, by agreement and with approval of an administrative law judge, legal advisor or the commission, may enter into a compromise lump sum settlement in either permanent total or permanent partial disability cases which prorates the lump sum settlement over the life expectancy of the injured worker. When such an agreement has been approved, neither the weekly compensation rate paid throughout the case nor the maximum statutory weekly rate applicable to the injury shall apply. No compensation rate shall exceed the maximum statutory weekly rate as of the date of the injury. Instead, the prorated rate set forth in the approved settlement documents shall control and become the rate for that case. This section shall be retroactive in effect.

287.300. If **[the]** an employer **[is]** **has** not insured **[his]** **its** liability hereunder, **its liability** shall be primary and direct. If **[he is]** insured **[his]**, **its** liability shall be secondary and indirect, and **[his]** **its** insurer shall be primarily and directly liable hereunder to the injured employee, his **or her** dependents or other persons entitled to rights hereunder. On the request of the division or the commission and at every hearing the employer shall produce and furnish it with a copy of his policy of insurance, and on demand the employer shall furnish the injured employee, or his dependents, with the correct name and address of his

insurer, and his failure to do so shall be prima facie evidence of his failure to insure, but the presumption shall be conclusively rebutted by an entry of appearance of his insurer. Both the employer and his insurer shall be parties to all agreements or awards of compensation, but the same shall not be enforceable against the employer, except on motion and proof of default by the insurer. Service on the employer shall be sufficient to give the division or the commission jurisdiction over the person of both the employer and his insurer, and the appearance of the employer in any proceeding shall also constitute the appearance of his insurer, provided that after appearance by an insurer, the insurer shall be entitled to notice of all proceedings hereunder.

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, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice. 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] **injury becomes "reasonably discoverable and apparent" defined as being when employee knew or should have known his or her injury was related to his or her employment** unless the employee can prove the employer was not prejudiced by failure to receive the notice.

287.430. Except for a claim for recovery filed against  
2 the second injury fund, no proceedings for compensation  
3 under this chapter shall be maintained unless a claim  
4 therefor is filed with the division within two years after  
5 the date of injury or death, or the last payment made under  
6 this chapter on account of the injury or death, except that  
7 if the report of the injury or the death is not filed by the  
8 employer as required by section 287.380, the claim for  
9 compensation may be filed within three years after the date  
10 of injury, death, or last payment made under this chapter on  
11 account of the injury or death. The filing of any form,  
12 report, receipt, or agreement, other than a claim for  
13 compensation, shall not toll the running of the periods of  
14 limitation provided in this section. The filing of the  
15 report of injury or death three years or more after the date  
16 of injury, death, or last payment made under this chapter on  
17 account of the injury or death, shall not toll the running  
18 of the periods of limitation provided in this section, nor  
19 shall such filing reactivate or revive the period of time in  
20 which a claim may be filed. A claim against the second  
21 injury fund shall be filed [within two years after the date  
22 of the injury or within one year after a claim is filed  
23 against an employer or insurer pursuant to this chapter,  
24 whichever is later] **at any point prior to the conclusion by**  
25 **settlement or final award, after appeals, of the primary**  
26 **claim.** In all other respects the limitations shall be  
27 governed by the law of civil actions other than for the  
28 recovery of real property, but the appointment of a  
29 conservator shall be deemed the termination of the legal  
30 disability from minority or disability as defined in chapter  
31 475. The statute of limitations contained in this section  
32 is one of extinction and not of repose.

287.480. 1. If an application for review is made to  
the commission within twenty days from the date of the award  
**by any party, all parties to the case are automatically**  
**retained as a party or parties to the appeal;** the full  
commission, if the first hearing was not held before the  
full commission, shall review the evidence, or, if  
considered advisable, as soon as practicable hear the  
parties at issue, their representatives and witnesses and  
shall make an award and file it in like manner as specified  
in section 287.470. Any notice of appeal, application or  
other paper required under this law to be filed with the  
division or the commission shall, when mailed to or  
transmitted by electronic facsimile meeting the requirements  
of the division and received by the division or the  
commission, be deemed to be filed as of the date endorsed by  
the United States post office on the envelope or container  
in which such paper is received, or the date received if  
filed by facsimile. In instances where the last day for the  
filing of any such paper falls on a Sunday or legal holiday,  
the filing shall be deemed timely if accomplished on the  
next day subsequent which is neither a Sunday or a legal  
holiday. When filing by electronic facsimile meeting the  
requirements of the division, the parties shall, on the same  
date as the facsimile transmission, mail by the United  
States mail the original and the requisite number of copies  
to the commission. In addition, the commission may allow  
filing of applications for review, briefs, motions, and  
other requests for relief with the commission by electronic  
means, in such manner as the commission may, by regulation,  
prescribe.

2. An employer who has been determined by the division  
to be an employer subject to and operating pursuant to this

chapter and has also been determined to be uninsured may file an application for review but such application for review shall be accompanied with and attached to the application for review a bond which shall be conditioned for the satisfaction of the award in full, and if for any reason the appeal is dismissed or if the award is affirmed or modified, to satisfy in full such modification of the award as the commission may award. The surety on such bond shall be a bank, savings and loan institution or an insurance company licensed to do business in the state of Missouri. No appeal to the commission shall be considered filed unless accompanied by such bond and such bond shall also be a prerequisite for appeal as provided in section 287.495 and such appeal pursuant to section 287.495 shall not be considered filed unless accompanied by such bond. If any other employer pursuant to section 287.040 would be liable, the employee shall be paid benefits from the bond until the bond is exhausted before the section 287.040 employer is required to pay.

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 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. **The appellate court shall have jurisdiction to review a temporary or partial award of compensation on the issue of the employer's liability where an employer claims it is not liable for paying any compensation and is disputing all liability.**

287.540. [On notice to the other] **By agreement of the**  
2 parties, the commission [or court] may permit the employer  
3 to be discharged from further liability under any agreement,  
4 award or judgment for compensation by furnishing to the  
5 person entitled thereto an annuity or other obligation,  
6 approved by the commission [or court], by which payment is  
7 assumed by some responsible person[, or by depositing the  
8 commutable value thereof with the commission to be disbursed  
9 to the persons entitled thereto in such manner as the  
10 commission shall determine] **or entity. The basis for**  
11 **approval of any such settlement shall be the same as**  
12 **provided for in settlements under section 287.390.**

287.780. No employer or agent shall discharge or  
2 discriminate against any employee for exercising any of his  
3 or her rights under this chapter when the exercising of such  
4 rights is the motivating factor in the discharge or  
5 discrimination. Any employee who has been discharged or  
6 discriminated against in such manner shall have a civil  
7 action for damages against his or her employer. For  
8 purposes of this section, "motivating factor" shall mean  
9 that the employee's exercise of his or her rights under this  
10 chapter actually played a role in the discharge or  
11 discrimination and had a determinative influence on the  
12 discharge or discrimination. **An offer of settlement of a**  
13 **worker's compensation case made contingent upon a voluntary**  
14 **resignation of employment is not evidence that can be used**  
15 **in any civil action brought under this section.**

[287.530. 1. The compensation provided in  
2 this chapter may be commuted by the division or  
3 the commission and redeemed by the payment in  
4 whole or in part, by the employer, of a lump sum  
5 which shall be fixed by the division or the  
6 commission, which sum shall be equal to the

7 commutable value of the future installments  
8 which may be due under this chapter, taking  
9 account of life contingencies, the payment to be  
10 commuted at its present value upon application  
11 of either party, with due notice to the other,  
12 if it appears that the commutation will be for  
13 the best interests of the employee or the  
14 dependents of the deceased employee, or that it  
15 will avoid undue expense or undue hardship to  
16 either party, or that the employee or dependent  
17 has removed or is about to remove from the  
18 United States or that the employer has sold or  
19 otherwise disposed of the greater part of his  
20 business or assets.

21 2. In determining whether the commutation  
22 asked for will be for the best interest of the  
23 employee or the dependents of the deceased  
24 employee, or so that it will avoid undue expense  
25 or undue hardship to either party, the division  
26 or the commission will constantly bear in mind  
27 that it is the intention of this chapter that  
28 the compensation payments are in lieu of wages  
29 and are to be received by the injured employee  
30 or his dependents in the same manner in which  
31 wages are ordinarily paid. Therefore,  
32 commutation is a departure from the normal  
33 method of payment and is to be allowed only when  
34 it clearly appears that some unusual  
35 circumstances warrant such a departure.]

✓