SECOND REGULAR SESSION

SENATE BILL NO. 777

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS FLOTRON, EHLMANN AND KLARICH.

Read 1st time January 20, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2870.04I

AN ACT

To repeal sections 287.020, 287.030, 287.040, 287.061, 287.067, 287.090, 287.129, 287.140, 287.170, 287.210, 287.220, 287.250, 287.260, 287.337, 287.380, 287.390, 287.460, 287.480, 287.610, 287.655 and 287.690, RSMo 1994, and section 287.650, RSMo Supp. 1997, relating to employers and employees, and to enact in lieu thereof twenty-two new sections relating to the same subject.

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

Section A. Sections 287.020, 287.030, 287.040, 287.061, 287.067, 287.090, 287.129, 287.140, 287.170, 287.210, 287.220, 287.250, 287.260, 287.337, 287.380, 287.390, 287.460, 287.480, 287.610, 287.655 and 287.690, RSMo 1994, and section 287.650, RSMo Supp. 1997, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 287.020, 287.030, 287.040, 287.061, 287.067, 287.090, 287.129, 287.140, 287.170, 287.210, 287.220, 287.250, 287.260, 287.380, 287.390, 287.460, 287.480, 287.610, 287.650, 287.655, 287.690 and 610.019, to read as follows:

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

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

or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the transportation division of the department of economic development or by the interstate commerce commission.

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

(2) Pursuant to the power of the general assembly to state public policy, the general assembly declares the Smith v. Climate Engineering, 939 S.W.2d 429 (Mo.App. E.D. 1996), properly states the proof of work-relatedness requires evidence that work was a substantial factor in the causal relationship and nothing in Wolfgeher v. Wagner Cartage Service Inc., 781 S.W.2d 781 (Mo. banc 1983), shall be interpreted to suggest otherwise.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

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

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

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

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

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

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

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

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

5. Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.

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

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

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

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

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

287.030. 1. The word "employer" as used in this chapter shall be construed to mean:

(1) Every person, **sole proprietor, limited liability partners, partners or copartners comprising a** partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay;

(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi-corporation, or cities under special charter, or under the commission form of government;

(3) Any of the above defined employers must have five or more employees to be deemed an employer for the purposes of this chapter unless election is made to become subject to the provisions of this chapter as provided in subsection 2 of section 287.090, except that construction

industry employers who erect, demolish, alter or repair improvements shall be deemed an employer for the purposes of this chapter if they have one or more employees.

2. Any reference to the employer shall also include his insurer **or group self-insurer**.

287.040. 1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer **for the purposes of section 287.030,** and shall be liable under this chapter to **the qualified employees of** such contractor**[**, his**] and the qualified employees of all** subcontractors**[**, and their employees**] working under said contractor**, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business. **The terms "qualified employees" shall not include the owners, whether as sole proprietors, partners or greater than twenty-five percent stockholders, of such contractors or subcontractors and shall also not include the executive officers of any such corporate contractors or subcontractors. In all such cases, the employer shall request a current, valid certificate of insurance from its contractor verifying workers' compensation coverage for such contractor's employees if required under this law.**

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

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

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

287.061. 1. Any city or county which issues an occupational or business license **for a contractor in the construction industry** shall require a certificate of insurance for workers' compensation coverage **[**if the applicant for the license is required to cover his liability under this chapter**] or an affidavit, the form of which shall be provided by the division of workers' compensation, signed by the applicant attesting that he or she is exempt**.

2. Any **[**applicant**] contractor** who fails to comply with the provisions of subsection 1 of this section shall be denied such a license until **[**he**] such person** furnishes a certificate of insurance.

3. It is unlawful, pursuant to section 287.128, for any **[**applicant**] contractor** to provide fraudulent information pursuant to this section.

4. Nothing in this section shall be construed to create or constitute a liability to or a cause of action against a city or county in regard to the issuance of any license pursuant to this section.

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

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

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

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

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

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

7. With regard to occupational disease due to repetitive motion, if the exposure to the

repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

8. In any proceeding under subsection 7 of this section, the employee, the last employer and any prior employer shall have the right to join any prior employer in the principal case as an alleged employer for the purpose of determining whether or not there was repetitive motion exposure which was the major contributing factor to the injury during the employment of such employee, all of such matters to be tried in one hearing in which the division shall have exclusive jurisdiction of the parties and the subject matter to determine the issues. Upon a hearing, the administrative law judge, or the parties, as they may otherwise agree, shall determine which of the employers was the last employer with which there was an occupational disease which was the major contributing factor to the injury the employee sustained and, in the event of a voluntary payment, shall order reimbursement by such employer or its insurer. The employee shall cooperate in all phases of such hearing, giving testimony as is necessary to determine the issues. Should the employee fail to cooperate in being willing to testify to the essential facts, the administrative law judge shall suspend all rights to benefits under this chapter unless and until the employee so cooperates. If the employee fails to cooperate within a period of six months after being ordered to do so by the administrative law judge, his case shall be automatically dismissed with prejudice as to any rights under this chapter.

287.090. 1. This chapter shall not apply to:

(1) Employment of farm labor, domestic servants in a private home, including family chauffeurs, or occasional labor performed for and related to a private household;

(2) Any worker who is a member of the employer's family within the third degree of affinity or consanguinity but such shall be included in the total number of employees of such employer for purposes of subdivision (3) of subsection 1 of section 287.030;

(3) Qualified real estate agents and direct sellers as those terms are defined in section 3508 of title 26 United States Code;

(4) Employment where the person employed is an inmate confined in a state prison, penitentiary or county or municipal jail, or a patient or resident in a state mental health facility, and the labor or services of such inmate, patient, or resident are exclusively on behalf of the state, county or municipality having custody of said inmate, patient, or resident. Nothing in this subdivision is intended to exempt employment where the inmate, patient or resident was hired by a state, county or municipal government agency after direct competition with persons who are not inmates, patients or residents and the compensation for the position of employment is not contingent upon or affected by the worker's status as an inmate, patient or resident;

(5) Volunteers of a tax-exempt organization which operates under the standards of section 501(c)(3) of the federal Internal Revenue Code, where such volunteers are not paid wages, but provide services purely on a charitable and voluntary basis;

(6) Persons providing services as adjudicators, sports officials, or contest workers for interscholastic activities programs or similar amateur youth programs who are not otherwise employed by the sponsoring school, association of schools or nonprofit tax-exempt organization sponsoring the amateur youth programs.

2. **[**Any employer in this section exempted under subsection 1 of this section may bring himself within the provisions of this chapter by filing with the division notice of his election to accept the provisions, or by the purchasing and accepting by the employer of a valid compensation insurance policy, and the election by the purchase and acceptance of the insurance policy shall include the exempted employments described in subsection 1 of this section if such intent is shown by the terms of the policy. The election shall take effect and continue from the date of filing with the division by the employer of his election to accept liability under this chapter, or from the effective date of the insurance policy. Any employer electing to become liable under this chapter may withdraw his election by filing with the division a notice that he desires to withdraw his election, which withdrawal shall take effect thirty days after the date of the filing, or at such later date as may be specified in the notice of withdrawal.**] Any exempted employer in this section may subject himself or herself, or any class of employee described in this section, to the provisions of this chapter by filing with the division a notice of election to accept the provisions, or by purchasing and accepting a valid compensation policy, which list such election in a manner and such form as determined by the director of the department of insurance, and shall include the exempted employments described in subsection 1 of this section, or by adding an endorsement to an existing compensation insurance policy for the exempted classes of employees described in subsection 1 of this section, or by qualifying as an approved self-insured employer. The election shall take effect and continue beginning on the date of filing with the division by the employer, or beginning on the effective date of the insurance policy or endorsements, whichever occurs first. Any exempted employer electing to become liable pursuant to this chapter may withdraw such election by filing with the division a notice that the employer desires to withdraw such election, which withdrawal shall take effect at such a date as may be specified in the notice of withdrawal, or by the nonrenewal of a valid compensation insurance policy, including endorsements thereto.**

3. Any insurance company authorized to write insurance under the provisions of this chapter in this state shall file with the division a memorandum on a form prescribed by the division of any workers' compensation policy issued to any employer and of any renewal or cancellation thereof.

4. The mandatory coverage sections of this chapter shall not apply to the employment of any member of a family owning a family farm corporation as defined in section 350.010, RSMo, or to the employment of any salaried officer of a family farm corporation organized pursuant to the laws of this state, but such family members and officers of such family farm corporations may be covered under a policy of workers' compensation insurance if approved by a resolution of the board of directors. Nothing in this subsection shall be construed to apply to any other type of corporation other than a family farm corporation.

5. A corporation may be exempt from the provisions of this chapter, when there are no more than two owners of the corporation who are also the only employees of the corporation, by filing with the division notice of election to be exempt. The election shall take effect and continue from the date of filing with the division by the corporation of the notice of exemption from liability under this chapter. Any corporation making such an election may withdraw its election by filing with the division a notice to withdraw the election, which shall take effect thirty days after the date of the filing, or at such later date as may be specified in the notice of withdrawal.

287.129. 1. A health care provider commits a fraudulent workers' compensation insurance act if he knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any claim for payment or other benefit which involves any one or more of the following false billing practices:

(1) "Unbundling" an insurance claim by claiming a number of medical procedures were performed instead of a single comprehensive procedure;

(2) "Upcoding" a medical, hospital or rehabilitative insurance claim by claiming that a more serious or extensive procedure was performed than was actually performed;

(3) "Exploding" a medical, hospital or rehabilitative insurance claim by claiming a series of tests were performed on a single sample of blood, urine, or other bodily fluid, when actually the series of tests were part of one battery of tests; or

(4) "Duplicating" a medical, hospital or rehabilitative insurance claim made by a health care provider by resubmitting the claim through another health care provider in which the original health care provider has an ownership interest. Nothing in this section shall prohibit providers from making good faith efforts to ensure that claims for reimbursement are coded to reflect the proper diagnosis and treatment.

2. If, by its own inquiries or as a result of complaints, the department of insurance has reason to believe that a person has engaged in, or is engaging in, any fraudulent workers' compensation insurance act contained in this section, it may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect evidence.

3. If the matter that the department of insurance seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its

representative to examine the matter at the place where it is located. The department may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

4. Any person violating any of the provisions of this section shall be guilty of class A misdemeanor and, in addition, shall be liable to the state of Missouri for a fine not to exceed ten thousand dollars or double the value of the fraud whichever is greater.

287.140. 1. In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620, RSMo. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the place of injury or the place of his residence, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment. In addition to all other payments authorized or mandated under this subsection, when an employee who has returned to full-time employment is required to submit to a medical examination for the purpose of evaluating permanent disability, or to undergo physical rehabilitation, the employer or its insurer shall pay a proportionate weekly compensation benefit based on the provisions of section 287.180 for such wages that are lost due to time spent undergoing such medical examinations or

physical rehabilitation, except that where the employee is undergoing physical rehabilitation, such proportionate weekly compensation benefit payment shall be limited to a time period of no more than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall mean the restoration of the seriously injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker. Determination as to what care and restoration constitutes physical rehabilitation shall be the sole province of the treating physician. Should the employer or its insurer contest the determination of the treating physician, then the director shall review the case at question and issue his determination. Such determination by the director shall be appealable like any other finding of the director or the division. Serious injury includes, but is not limited to, quadriplegia, paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and back injuries not amenable alone to recognized medical and surgical procedures.

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

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

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

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

7. Every hospital or other person furnishing the employee with medical aid **at any time rendered, before and after the employee's injury,** shall permit **all of** its record **pertaining to any relevant parts of the body alleged to have been injured in any pending claim filed against the employer and against the second injury fund** to be copied by and shall furnish full information to the division or the commission, the employer, **the second injury fund,** the employee or his dependents and any other party to any proceedings for compensation under this chapter, and certified copies of the records shall be admissible in evidence in any such proceedings.

8. The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof. **Nothing is this chapter shall prevent the employer from settling its liability for the replacement, modification or alteration of prosthetic devices, as needed, for life, at any time.**

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.

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

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

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

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

by the division. The notice shall be on a form prescribed by the division.

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

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

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

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

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

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

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

3. No compensation shall be payable for temporary total, temporary partial or permanent total disability under the workers' compensation law for any week that an employee has received or is receiving unemployment compensation benefits under the

employment security law of Missouri, under the law of another state or a similar federal law.

287.210. 1. After an employee has received an injury he shall from time to time thereafter **[**during disability**]** submit to reasonable medical **[**examination**] or vocational examinations** at the request of the employer, his insurer, **the state treasurer as custodian of the second injury fund,** the commission, the division or an administrative law judge, the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee may have his own physician **or vocational expert** present, and if the employee refuses to submit to the examination **or interview**, or in any way obstructs it, his right to compensation shall be forfeited during such period unless in the opinion of the commission the circumstances justify the refusal or obstruction. **The employer and the second injury fund shall each have the right to vocational and medical evaluations as provided in this section.**

2. The commission, the division or administrative law judge shall, when deemed necessary, appoint a duly qualified impartial physician **or vocational expert** to examine**, interview or treat** the injured employee, and any **[**physician**] such expert** so chosen, if he accepts the appointment, shall promptly make the examination requested and make a complete **[**medical**]** report to the commission or the division in such duplication as to provide all parties with copies thereof. The physician's **or qualified vocational expert's** fee shall be fair and reasonable, as provided in subsection 3 of section 287.140, and the fee and other reasonable costs of the impartial examination may be paid as other costs under this chapter. If all the parties shall have had reasonable access thereto, the report of the physician **qualified or qualified vocational expert** shall be admissible in evidence **to assist the trier of fact in determining the issues in the case**.

3. The testimony of any **qualified** physician **or qualified vocational expert** who treated**, interviewed** or examined the injured employee shall be admissible in evidence in any proceedings for compensation under this chapter, but only if the medical **or vocational rehabilitation** report of the physician **or vocational expert** has been made available to all parties as in this section provided. **Except as provided in subsection 6 of this section, the procedure for admitting the testimony of any physician or vocational expert will be the same as in civil cases, provided the party offering the physician's or vocational expert's records and reports may have them marked as an exhibit, and admitted into evidence, without the necessity of the physician or vocational expert having to read the contents of the same. Thereafter, the opposing party shall have full right of cross-examination.** Immediately upon receipt of notice from the division or the commission setting a date for hearing of a case in which the nature and extent of an employee's 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 **and vocational expert's** reports, including those made both by treating and examining **[**physician or physicians**] experts**, to the end that the parties may be commonly informed of all **[**medical**]** findings and opinions. The exchange of medical **and vocational expert's** reports shall be made at least seven days before the date set for the hearing **or at least seven days before the date set for the evidence deposition of the qualified physician or vocational expert** 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 **or vocational** reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical **or vocational expert's** report **[**of the treating or examining physician**]** at least seven days before such **[**physician's**] expert'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 **or vocational** report, the **[**physician**] expert** shall not be permitted to testify at that hearing or by **[**medical**]** deposition **to the extent the rule stated herein has been violated**.

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 element or elements of a complete medical report **other than a disability rating** may be met by the physician's records.

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

7.**]** The testimony of a treating or examining physician **or vocational expert** may be submitted in evidence on the issues in controversy by a complete medical **or vocational** report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit **[**a complete medical**] the** report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the **[**physician by deposition**] expert**. The notice shall include a copy of the report **[**and**],** all the **[**clinical and treatment**] office** records of the physician **[**including**] or vocational expert and** copies of all records and reports received **and reviewed** by the physician **or vocational expert** from **[**other**]** health care

providers. [Without additional cost, a party may submit interrogatories to the opposing party's physician on the subject matter of the report and records submitted pursuant to this subsection, according to the rules of the supreme court of Missouri.] The party offering the report must make the [physician] **expert** available for cross-examination testimony by deposition [not later than seven days] before the matter is set for hearing, and [each cross-examiner] **the party offering the expert** shall compensate the [physician for the portion of testimony obtained in an amount not to exceed a rate of reasonable compensation to be set by the commission by rule taking into consideration the specialty practiced by the physician. Cross-examination testimony shall not bind the cross-examining party. Any testimony obtained by the offering party shall be at that party's expense on a proportional basis, including the deposition fee of the physician] **expert**. Upon request of any party, the party offering [a] **the** 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] **expert**. Within [ten] **twenty** days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report **herein** 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 **timely** 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. The provisions of this subsection shall not apply to claims against the **employer and against the** second injury fund.

[8.] **7.** 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.] **8.** 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. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting

in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and 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, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

2. 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. 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. 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, 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.

3. 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.

4. 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.

5. 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 to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer, 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 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.

6. Every three years the second injury fund shall have an actuarial study made to determine the solvency of the fund, appropriate funding level of the fund, and forecasted expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988. The expenses of such actuarial studies shall be paid out of the fund for the support of the division of workers' compensation.

7. 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 9 of this section. The attorney general shall provide all necessary information to the division for this purpose.

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

9. Any employee who at the time a compensable work-related injury is sustained is employed by more than one employer, the employer for whom the employee was working when the injury was sustained shall be responsible for wage loss benefits applicable only to the earnings in that employer's employment and the injured employee shall be entitled to file a claim against the second injury fund for any additional wage loss benefits attributed to loss of earnings from the employment or employments where the injury did not occur, up to the maximum weekly benefit less those benefits paid by the employer in whose employment the employee sustained the injury. The employee shall be entitled to a total benefit based on the total average weekly wage of such employee computed according to subsection 8 of section 287.250. The employee shall not be entitled to a greater rate of compensation than allowed by law on the date of the injury. The employer for whom the employee was working where the injury was sustained shall be responsible for all medical costs incurred in regard to that injury. **[**The provisions of this subsection shall expire on August 28, 1996.**]**

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

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

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

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

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

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 such manner and by such method as, in

the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

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

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

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

8. For an employee with multiple employments, **as to the employee's entitlement to any temporary total or temporary partial disability benefits only under this chapter, 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 **[**the**] this** injury**; provided that any non-workers' compensation accident or sickness indemnity benefit otherwise paid to the employee from any employer for whom the employee was working at the time of the injury because of the injury shall first be subtracted from any amount found to be due and owed. The employer for whom the employee was injured shall be liable for that compensation rate which the employee would otherwise have been entitled to receive had the employee been working for that employer only at the time of the injury. Any additional or deferential amount due to the employee shall be due and owing from the second injury fund of the state of Missouri under the provisions of subsections 3 and 9 of section 287.220**.

287.260. 1. The compensation payable under this chapter, whether or not it has been awarded or is due, shall not be assignable, shall be exempt from attachment, garnishment, and execution, shall not be subject to setoff or counterclaim, or be in any way liable for any debt and in case of the insolvency of an employer or his insurer, or the levy of an attachment or an

execution against an employer or insurer shall be entitled to the same preference and priority as claims for wages, without limit as to time or amount, except that if written notice is given to the division or the commission of the nature and extent thereof, the division or the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if the services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments. All attorney's fees for services in connection with this chapter shall be subject to regulation by the division or the commission and shall be limited to such charges as are fair and reasonable and the division or the commission shall have jurisdiction to hear and determine all disputes concerning the same.

2. Notwithstanding subsection 1 of this section, the compensation payable under this chapter other than compensation for medical expenses and therapy under section 287.141, shall be assignable for the purpose of satisfying child support obligations, shall be subject to attachment, garnishment and execution for the purpose of collecting and satisfying unpaid and delinquent child support obligations, and shall be subject to the lien provided for in section 454.517, RSMo. Section 452.140, RSMo, shall apply to limit property exemptions available in an action to collect child support under this subsection.

3. Notwithstanding subsections 1 and 2 of this section, the compensation payable under this chapter shall be subject to any credits due to the employer under section 287.160 and section 287.170.

[287.337. Rates and rating systems used by any insurer with regard to employers within the construction group of code classifications for work performed within this state shall, where applicable, be based upon the principles that an employer with a credible Missouri intrastate modification rate shall be required to apply only that intrastate modification rate on Missouri payroll exposure. Such employers without a credible Missouri intrastate modification rate shall be subjected to the higher of one point zero or their credible interstate modification rate on Missouri payroll exposure.**]**

287.380. 1. **[**Except as provided in subsection 2 of this section,**]** Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within ten days after knowledge of an accident resulting in personal injury to any employee notify the division thereof, and shall, within one month from the date of filing of the original notification of injury, file with the division under such rules and regulations and in such form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or

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

2. **[**The division shall provide by rule that for accidents involving less than five hundred dollars in total medical costs and no lost time from the employment, upon receipt of the notice required by section 287.420, the employer shall deliver a notice to the employee, on a form provided by the division, of the employee's rights under this chapter, giving the date and location of the accident, and the employer shall retain a copy of such notice signed by the employee. The employer shall forward a signed copy to the division accompanied by the report of injury.

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

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

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

287.390. 1. Nothing in this chapter shall be construed as preventing the parties to claims

hereunder from entering into voluntary agreements in settlement thereof, but no agreement by an employee or his dependents to waive his rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death.

2. **It shall be the policy of the division that no administrative law judge, associate administrative law judge, legal advisor or other employee of the division shall refer, send, or otherwise direct any injured employee or party to any specific attorney, physician or other provider of services. If it is proven to the director of the division that any such person did refer, send, or otherwise direct an injured employee or party to any specific attorney, physician or other provider of services, then such action shall constitute grounds for termination of employment or discipline with the division for violating this subsection.**

3. In the case of compromise settlements in which the employer and employee, with or without representation by attorney, agree to the settlement, the division shall approve the compromise settlement agreement, if it is reasonable.

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

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

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

287.460. 1. The division, through an administrative law judge, shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute **by issuing the written award no later than thirty days after hearing the last of the evidence, which shall occur no later than sixty days from the date of commencement of the hearing, except in extraordinary circumstances where a lengthy trial or complex issues necessitate a longer time frame than sixty days**. All evidence

introduced at any such hearings shall be reported by a competent reporter appointed by the division or be recorded by electronic means. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent by United States mail to the parties in dispute and the employer's insurer.

2. The division of workers' compensation shall develop by rule procedures whereby mediation services are provided to the parties in a claim for workers' compensation benefits whereby claims may be mediated by the parties at a prehearing conference when the division determines that a claim may be settled or upon application for a mediation settlement conference filed by either party.

3. The division may require the parties to produce at the mediation conference all available medical records and reports. Such mediation conference shall be informal to ascertain the issues and attempt to resolve the claim or other pending issues. Such mediation conference may be set at any time prior to the commencement of the evidentiary hearing and nothing in this section shall be interpreted to delay the setting of the matter for hearing. Upon the request of any party, a person providing mediation settlement services shall be disqualified from conducting any evidentiary hearing relating to the claim without limiting the rights conferred by section 287.810.

287.480. If an application for review is made to the commission within twenty days from the date of the award, 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 electronic fax 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**[**,**]. When filing by electronic fax meeting the requirements of the division, the parties shall, on the same date as the fax transmission, place in the United States mail the original and the requisite number of copies, mailing same to the commission.** The filing shall be deemed timely if accomplished on the next day subsequent which is neither a Sunday or a legal holiday.

287.610. 1. The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty in number, who shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. Any administrative law judge may be discharged or removed only by the governor, based upon review by the department, pursuant to

an evaluation by the administrative law judge review committee of the judge's conduct, performance and productivity. The administrative law judge review committee shall be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one employer representative, neither of whom shall have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. The employee representative and employer representative shall have a working knowledge of workers' compensation. The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission and shall not serve on any two consecutive reviews conducted by the committee. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. Upon a signed written letter of complaint, the administrative law judge review committee may institute a review, without the direction of the director of the department, of an administrative law judge and submit its findings to the governor.

2. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction **[**whatsoever**]** upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award**[**; however**]**, **except to correct a clerical award if the correction is made by the administrative law judge within twenty days of the original award.** The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. **The commission may also correct a clerical error in awards within thirty days of its final award.** With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial

relations commission, and shall be subject to review as provided by section 287.480.

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

4. All administrative law judges and legal advisors shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' and legal advisors' required duties and responsibilities. Such training requirements shall be established by the division subject to appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

287.650. 1. The division of workers' compensation shall have such powers as may be necessary to carry out all the provisions of this chapter, and it may make such rules and regulations as may be necessary for any such purpose, subject to the approval of the labor and industrial relations commission of Missouri. The division shall have power to strike pleadings and enter awards against any party or parties who fail or refuse to comply with its lawful orders.

2. **(1)** The division shall have the power upon the expiration of five years after their receipt to destroy reports of injuries on which no compensation (exclusive of medical costs) was due or paid, together with the papers attendant to the filing of such reports, and also to destroy records in compensable cases after the expiration of ten years from the date of the termination of compensation.

(2) Records in compensable cases shall include the originals or duplicate originals by electronic or other means approved by the division, of the deposition of the employee, reports of examining physicians for both employee and employer containing ratings of disability, sufficient treatment records of the employee, including hospital diagnosis and operative summary sheets, to show nature and extent of the course of treatment, and copies of the compromise lump sum settlement papers in order that, if the employee has a later injury, or a second injury fund claim, these records shall be available for at least ten years to determine the nature and extent of the pre-existing disabilities in the earlier cases.

3. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

287.655. **1.** Any claim before the division may be dismissed for failure to prosecute in accordance with rules and regulations promulgated by the commission, except such notice need not be by certified or registered mail if the person or entity to whom notice is directed is represented by counsel and counsel is also given such notice at counsel's last known address. To dismiss a claim the administrative law judge shall enter an order of dismissal which shall be

deemed an award and subject to review and appeal in the same manner as provided for other awards in this chapter.

2. Any claim for compensation before the division shall be dismissed by a written order of dismissal by the judge upon the filing of a written request for dismissal with an administrative law judge by an employee or by an employee and his attorney, if represented, without the necessity of the notice of hearing required by sections 287.450, 287.460 and 287.520, subject to the review and appeal set forth in subsection 2 of this section.

287.690. 1. Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter and for the purpose set out in subsection 2 of this section, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in this state at the rate of two percent in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, 1994. If the balance of the fund estimated to be on hand on December thirty-first of the year each tax rate determination is made is less than one hundred ten percent of the previous year's expenses plus any additional revenue required due to new statutory requirements given to the division by the general assembly, then the director shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed and collected as herein provided. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with

subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following year. Net premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross assessments less canceled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

2. **Groups of employers qualified to insure their liability under chapters 287 or 537, RSMo, may utilize a uniform experience rating plan either promulgated by the state's approved advisory organization or developed by the group's actuary in determining the group's net premium or in complying with other promulgated rules by state agencies requiring the use of a uniform experience rating plan. The group's actuary must be a member in good standing of the American Academy of Actuaries or the Casualty Actuarial Society and have experience in Missouri's workers' compensation. Nothing in this section shall relieve an employer from remitting employer claims history to the state approved advisory organization.**

3. For every entity qualified to group self-insure their liability pursuant to chapters 287 or 537, each entity may not authorize total discounts for any individual member exceeding twenty-five percent. All discounts shall be based on objective quantitative factors and applied uniformly to all trust members.

4. After January 1, 1994, the director of the division shall make one or more loans to the Missouri employers mutual insurance company in an amount not to exceed an aggregate amount of five million dollars from the fund maintained to administer this chapter for start-up funding and initial capitalization of the company. The board of the company shall make application to the director for the loans, stating the amount to be loaned to the company. The loans shall be for a term of five years and, at the time the application for such loans is approved by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758, RSMo.

610.019. The provisions of subsection 5 of section 610.022 to the contrary, notwithstanding, documents filed by an applicant under section 287.280, RSMo, or section 537.620, RSMo, for licensure or approval by a state agency as well as documents filed by an entity under chapter 287 or 537, RSMo, to comply with regulations promulgated by a state agency, shall be closed records and shall not be considered documents open to the public.

✓