FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 148

93RD GENERAL ASSEMBLY

Reported from the Committee on Workplace Development and Workplace Safety March 9, 2005 with recommendation that House Committee Substitute for House Bill No. 148 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0343L.04C

AN ACT

To repeal sections 286.020, 287.020, 287.040, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.616, 287.642, 287.710, 287.715, 287.800, 287.812, 287.865, 287.894, 287.957, and 287.972, RSMo, and to enact in lieu thereof thirty-nine new sections relating to workers' compensation law, with penalty provisions and an effective date.

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

Section A. Sections 286.020, 287.020, 287.040, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.616, 287.642, 287.710, 287.715, 287.800, 287.812, 287.865, 287.894, 287.957, and 287.972, RSMo, are repealed and thirty-nine new sections enacted in lieu thereof, to be known as sections 286.020, 287.020, 287.040, 287.041, 287.043, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.253, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.642, 287.710, 287.715, 287.800, 287.801, 287.804, 287.808, 287.812, 287.865, 287.894, 287.957, and 287.972, to read as follows:

286.020. The term of office of each member of the commission shall be six years except that when first constituted one member shall be appointed for two years, one for four years and one for six years, and thereafter all vacancies shall be filled as they occur. The terms of office of the first members of the commission shall begin on the date of their appointment which shall

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

be within thirty days after the effective date of this chapter. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed by the governor, by and with the advice and consent of the senate, for the remainder of such term. **Every commission member appointed to serve, either as a permanent, an acting, a temporary, an interim, or as a legislative recess appointment, shall appear for confirmation before the senate within thirty days after the senate next convenes for regular session. Any member appointed or serving the labor and industrial relations commission without senate confirmation after said time period shall immediately resign from the commission and shall not be reappointed to the same office or position in accordance with section 51 of article IV of the Missouri Constitution.** The governor may remove any member of the commission, after notice and hearing, for gross inefficiency, mental or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office, incompetence or for any offense involving moral turpitude or oppression in office.

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 **as defined in subsection 43 of section 301.010, RSMo,** and operator of a motor vehicle which is leased or contracted with a driver to a for-hire **[**common or contract**]** motor **[**vehicle**]** carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the **[**motor carrier and railroad safety division of the department of economic development**]** **Missouri department of transportation** or by the **[**interstate commerce commission**] United States Department of Transportation, or any of its subagencies**.

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

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. **[**The injury must be incidental to and not independent of the relation of employer and employee. 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.**] An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.**

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

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

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

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

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

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

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

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

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

5. **[**Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.**]** **Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The "extension of premises" doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment. This subsection shall not apply when the employer is a law enforcement agency and a law enforcement officer of such agency is required by the agency to perform an official act while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home.**

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

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

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

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

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

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

S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999).

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

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

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

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

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

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

the term "for-hire motor carrier" shall in no event include an organization described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

287.043. In applying the provisions of subsection 1 of section 287.020 and subsection 4 of section 287.040, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "owner", as extended in but not limited to the following cases: *Owner Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc.*, 133 S.W. 3d 162 (Mo. App. S.D., 2004); *Nunn v. C.C. Midwest,* 151 S.W. 3d 388 (Mo. App. W.D., 2004).

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

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

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

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

2. An **injury by** occupational disease is compensable **only** if **[**it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.**] the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting**

medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. **An injury due to repetitive motion recognized as an occupational disease for purposes of this chapter is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.**

4. "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.**] 5.** "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.**] 6.** 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, **of paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590, RSMo,** or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

[6.**] 7.** 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.**] 8.** 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**] prevailing** factor **[**to**] in causing** the injury, the prior employer shall be liable for such occupational disease.

287.110. 1. This chapter shall apply to all cases within its provisions except those exclusively covered by any federal law **and those addressed in subsection 12 of section**

287.120.

2. This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, and also to all injuries received and occupational diseases contracted outside of this state where the employee's employment was principally localized in this state **within thirteen weeks of the injury**.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of **[**his**]** **the employee's** employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

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

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

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

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

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to **a drug-free workplace or** the use of alcohol or nonprescribed controlled drugs in the workplace, **[**which rule or policy has been kept posted in a conspicuous place on the employer's premises,**]** the compensation and death benefit provided for herein shall be **[**reduced fifteen percent**] forfeited** if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs**[**; provided, that it is shown that the employee had actual knowledge of the rules or policy so adopted by the employer and, provided further that the employer had, prior to the injury, made a diligent effort to inform the employee of the requirement to obey any reasonable rule or policy adopted by the employer**]**. **A health care provider shall be compensated for all authorized services such provider rendered prior to an order of forfeiture of compensation and death benefits under this subsection.**

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

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

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

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall be conclusively presumed to mean the voluntary use of alcohol under such circumstances is the proximate cause of the injury.

7. **An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, RSMo, at the request of the employer shall result in forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes postinjury testing.**

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

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

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

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

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

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

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

12. An employee shall forfeit compensation for any injury or occupational disease under the provisions of this chapter, including compensation from the second injury fund created under section 287.220, and this state shall have no jurisdiction over any workers' compensation claim of an employee, when the employee:

(1) Files a claim or application for a hearing in another state requesting workers' compensation benefits for the injury or occupational disease; or

(2) Has affirmatively requested and accepted benefits for the injury or occupational disease from another state or commonwealth of competent jurisdiction.

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

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

(2) That employees must report all injuries immediately to the employer by advising the employer personally, the employer's designated individual or the employee's immediate boss, supervisor or foreman and that the employee may lose the right to receive compensation if the injury or illness is not reported within thirty days or in the case of occupational illness or disease, within thirty days of the time he or she is reasonably aware of work relatedness of the injury or illness**; employees who fail to notify their employer within thirty days may jeopardize their**

ability to receive compensation, and any other benefits under this chapter;

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

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

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

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

2. The division of workers' compensation shall develop the notice to be posted and shall distribute such notice free of charge to employers and insurers upon request. Failure to request such notice does not relieve the employer of its obligation to post the notice. If the employer carries workers' compensation insurance, the carrier shall provide the notice to the insured within thirty days of the insurance policy's inception date.

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

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

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

[(2)**] 2. It shall be unlawful for any insurance company or self-insurer in this state to knowingly and intentionally refuse to comply with known and legally indisputable compensation obligations with intent to defraud.**

3. It shall be unlawful for any person to:

(1) Knowingly present multiple claims for the same occurrence with intent to defraud;

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

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

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

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

(c) Any person who purposefully prepares, makes or subscribes to any writing with the

intent to present or use the same, or to allow it to be presented in support of any such claim;

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

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

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

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

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

(8) Knowingly make or cause to be made a false or fraudulent material statement to an investigator of the division in the course of the investigation of fraud or noncompliance. For the purposes of subdivisions **(6), (7), and** (8) **[**and (9)**]** of this subsection, the term "statement" includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X ray or test results.

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

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

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

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

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

[4.**] 5. It shall be unlawful for any person, company, or other entity to prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance. Any person violating any of the provisions of this subsection shall be guilty of a class D**

felony and, in addition, shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.

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

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

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

9. Any and all reports, records, tapes, photographs, and similar materials or documentation submitted by any person, including the department of insurance, to the fraud and noncompliance unit or otherwise obtained by the unit pursuant to this section, used to conduct an investigation for any violation under chapter 287, shall be considered confidential and not subject to the requirements of chapter 610, RSMo. Nothing in this subsection prohibits the fraud and noncompliance unit from releasing records used to conduct an investigation to the local, state, or federal law enforcement authority or federal or state agency conducting an investigation, upon written request.

[7.**] 10.** There is hereby established in the division of workers' compensation a fraud and noncompliance administrative unit responsible for investigating incidences of fraud and failure

to comply with the provisions of this chapter.

11. Any prosecution for a violation of the provisions of this section or section 287.129 shall be commenced within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense. As used in this subsection, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting attorney having jurisdiction to prosecute the action.

12. By January 1, 2006, the attorney general shall forward to the division and the members of the general assembly, the first edition of an annual report of the costs of prosecuting fraud and noncompliance under this chapter. The report shall include the number of cases filed with the attorney general by county by the fraud and noncompliance unit, the number of cases prosecuted by county by the attorney general and county prosecutor, fines and penalties levied and received, and all incidental costs.

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 subsection 1 of this section is guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to twenty thousand dollars. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsection 1 of this section and who subsequently violates any of the provisions of subsection 1 of this section is guilty of a class D felony.

287.140. 1. In addition to all other compensation **paid to the employee under this section**, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620, RSMo. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the **employee's principal** place of **[**injury or the place of his residence**]** **employment**, 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 shall permit its record to be copied by and shall furnish full information to the division or the commission, the employer, the employee or his dependents and any other party to any proceedings for compensation under this chapter, and certified copies of the records shall be admissible in evidence in any such proceedings.

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

9. 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.

14. The employer may allow or require an employee to use any of the employee's accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment, physical rehabilitation, or medical evaluations during work time. The intent of this subsection is to specifically supercede and abrogate any case law that contradicts the express language of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE OF LOSSES

	Weeks
(1) Loss of arm at shoulder	232
(2) Loss of arm between shoulder and elbow	222
(3) Loss of arm at elbow joint	210
(4) Loss of arm between elbow and wrist	200
(5) Loss of hand at the wrist joint	175
(6) Loss of thumb at proximal joint	60
(7) Loss of thumb at distal joint	45
(8) Loss of index finger at proximal joint	45
(9) Loss of index finger at second joint	35
(10) Loss of index finger at distal joint	30
(11) Loss of either the middle or ring finger at the	

proximal joint 35
(12) Loss of either the middle or ring finger at second joint 30
(13) Loss of either the middle or ring finger at the distal joint 26
(14) Loss of little finger at proximal joint 22
(15) Loss of little finger at second joint 20
(16) Loss of little finger at distal joint 16
(17) Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb 207
(18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb 160
(19) Loss of one leg at or above ankle and below knee joint 155
(20) Loss of one foot in tarsus 150
(21) Loss of one foot in metatarsus 110
(22) Loss of great toe of one foot at proximal joint 40
(23) Loss of great toe of one foot at distal joint 22
(24) Loss of any other toe at proximal joint 14
(25) Loss of any other toe at second joint 10
(26) Loss of any other toe at distal joint 8
(27) Complete deafness of both ears 180
(28) Complete deafness of one ear, the other being normal 49
(29) Complete loss of the sight of one eye 140

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

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

4. If an employee is seriously and permanently disfigured about the head, neck, hands

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

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

(1) For all injuries occurring on or after September 28, 1983, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to forty-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

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

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

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

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

6. **(1)** "Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating **established by medical finding, certified by a physician and** approved by an administrative law judge **[**or legal advisor**]**, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also

results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959.

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. When determining physical or anatomical impairment, a physician, medical provider, administrative law judge, the division, the commission, or a reviewing court shall not consider subjective complaints of pain which are not certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings.

(3) Except where otherwise addressed in this chapter the fifth edition of the "Guide to the Evaluation of Permanent Impairment", published by the American Medical Association, shall be applied in determining the level of disability under this section.

(4) Any award of compensation shall be reduced by an amount proportional to the permanent partial disability determined to be a preexisting disease or condition or attributed to the natural process of aging sufficient to cause or prolong the disability or need of treatment.

(5) Objective medical findings as used in subdivision (2) of this subsection are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

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

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

regarding testing frequencies and decibel standards for measuring hearing loss.

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

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

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

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

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

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

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

287.203. Whenever the employer has provided compensation under section 287.170,

287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. **[**Reasonable cost of recovery shall be awarded to the prevailing party.**] If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.**

287.215. No statement in writing made or given by an injured employee, whether taken and transcribed by a stenographer, signed or unsigned by the injured employee, or any statement which is mechanically or electronically recorded, or taken in writing by another person, or otherwise preserved, shall be admissible in evidence, used or referred to in any manner at any hearing or action to recover benefits under this law unless a copy thereof is given or furnished the employee, or his dependents in case of death, or their attorney, within **[**fifteen**] thirty** days after written request for it by the injured employee, his dependents in case of death, or by their attorney. The request shall be directed to the employer or its insurer by certified mail. **The term "statement" as used in this section shall not include a videotape, motion picture, or visual reproduction of an image of an employee.**

287.253. A monetary bonus, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation or wages for purposes of any workers' compensation claim governed by this chapter.

287.390. 1. **[**Nothing in this chapter shall be construed as preventing the**]** Parties to claims hereunder **[**from entering**] may enter** into voluntary agreements in settlement thereof, but no agreement by an employee or his **or her** dependents to waive his **or her** rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. **An administrative law judge or the commission shall approve an agreement entered into more than forty-five days after the date of injury as valid and enforceable unless the administrative law judge or the commission makes a specific finding of fact that the**

agreement is manifestly unjust. Parties to claims under this chapter may enter into voluntary agreements in settlement of those claims and such agreements shall be approved, valid, and not subject to the requirements under subsection 6 of section 287.190.

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

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

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

5. In any claim under this chapter where an offer of settlement is made in writing and filed with the division by the employer within ninety days of the date of injury, an employee is entitled to one hundred percent of the amount offered, provided such employee is not represented by counsel at the time the offer is tendered. Where such offer of settlement is not accepted and where additional proceedings occur with regard to the employee's claim, the employee is entitled to one hundred percent of the amount initially offered plus seventy-five percent of any amount in dispute. Legal counsel representing the employee shall receive reasonable fees for services rendered, not to exceed twenty-five percent of the amount in dispute as payment for all legal services rendered.

6. As used in this chapter, "amount in dispute" means the dollar amount in excess of the dollar amount offered by, agreed to, or paid by the employer. An offer of settlement shall not be construed as an admission of liability.

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

repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition.

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

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

287.610. 1. **[**The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty-five in number beginning January 1, 1999, with one additional appointment authorized as of July 1, 2000, and one additional appointment authorized in each succeeding year thereafter until and including the year 2004, for a maximum of thirty authorized administrative law judges.**] After August 28, 2005, the governor may appoint additional administrative law judges for a maximum of forty authorized administrative law judges.** Appropriations **[**for any additional appointment**]** shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. **[**Any administrative law judge may be discharged or removed only by the governor pursuant to an evaluation and recommendation by the administrative law judge review committee, hereinafter referred to as "the committee", of the judge's conduct, performance and productivity.**] The director of the division of workers' compensation shall publish and maintain on the division's web site the appointment dates or initial dates of service for all administrative law judges.**

2. The division **director, as a member of the committee** shall **[**require and**]** perform**, in conjunction with the committee, an** annual **[**evaluations**] performance audit** of **[**an**] all current and future** administrative law **[**judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule**] judges by August 28, 2006**. The division**[**, by rule**] director, in conjunction with the committee**, shall establish the written **performance audit** standards on or before **[**January 1, 1999**] October 1, 2005**.

[(1) After an evaluation by the division, any administrative law judge, associate administrative law judge or legal advisor who has received an unsatisfactory evaluation in any of the three categories of conduct, performance or productivity, may appeal the evaluation to the committee.

(2) The division director shall refer an unsatisfactory evaluation of any administrative law judge, associate administrative law judge or legal advisor to the committee.

(3) When a written, signed complaint is made against an administrative law judge, associate administrative law judge or legal advisor, it shall be referred to the director of the division for a determination of merit. When the director finds the complaint has merit, it shall be referred to the committee for investigation and review.**]**

3. **The thirteen administrative law judges with the most years of service shall have a term of service which expires on August 28, 2008. The next thirteen administrative law judges with the most years of service in descending order shall have a term of service which expires on August 28, 2012. Administrative law judges appointed and not previously referenced in this subsection shall have a term of service which expires on August 28, 2016. Each subsequent term shall be twelve years. Administrative law judges may be eligible for reappointment. Any administrative law judge may be discharged or removed only by the governor under a performance audit by the administrative law judge review committee, hereinafter referred to as "the committee".**

4. The administrative law judge review committee **members** 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**] not** have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. **[**The employee representative and employer representative**] All members of the committee** 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. The committee shall conduct a hearing as part of any review of a referral or appeal made according to subsection 2 of this section.

4.**]** **5.** The committee shall **[**determine**]** within thirty days **[**whether an investigation shall be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The committee shall make a final referral to the governor pursuant to subsection 1 of this section within two hundred seventy days of the receipt of a referral or appeal**]** **of completing each performance audit make a recommendation to the governor. The performance audit shall carry a recommendation of confidence or no-confidence for each administrative law judge**.

[5.**]** **6.** The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

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

[7.**]** **8.** 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.

[8.**] 9. (1) The director of the division, in conjunction with the administrative law judge review committee appointed by the governor, shall conduct an annual performance audit of all administrative law judges. The audit results, stating the committee's decision of confidence or no confidence of each administrative law judge shall be annually sent to the governor and the members of the general assembly no later than the first week of each legislative session. A review of no confidence following an annual audit allows the governor to withdraw the appointment of the administrative law judge. The governor shall not consider for reappointment any administrative law judge with an annual performance audit of no confidence.**

(2) The review committee shall consist of the division director, the public member of the commission, who is an attorney, two members who represent employees and two members who represent employers. The division director shall serve as chairperson of the committee, and shall serve on the committee during his or her time of employment in his or her position. The term of service for all other members of the review committee shall be two years, with eligibility for one additional appointment for two years by the governor. However, the first review committee shall have one employee representative and one employer representative appointed for a three-year term, with eligibility for one additional appointment of two years by the governor. The review committee members shall all serve without compensation. Necessary expenses for review committee members and all necessary support services to the review committee shall be provided by the division.

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

287.615. 1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. **Beginning January 1, 2006,** the annual salary of each **[**legal advisor,**]** administrative law judge, administrative law judge in charge, and chief legal **[**advisor**] counsel** shall be as follows:

(1) **[**For each legal advisor, compensation at eighty percent of the rate at which an associate division circuit judge is compensated;

(2)**]** For **[**each**] any** chief legal **[**advisor**] counsel located at the division office in Jefferson City, Missouri**, compensation at **[**the same rate as a legal advisor plus**]** two thousand dollars **above eighty percent of the rate at which an associate circuit judge is compensated**;

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

[(4)**] (3)** For each administrative law judge in charge, compensation at the same rate as

an administrative law judge plus five thousand dollars.

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

287.642. The division of workers' compensation shall create in each of its area offices a public information program to assist all parties involved with an injury or claim under this chapter. **[**In providing assistance under this section, all of the division's legal advisors shall also act as public information persons and shall, upon request, meet with or otherwise provide information to employees, employers, insurers and health care providers and shall investigate complaints of possible violations of the provisions of this chapter. The division shall employ two additional legal advisors, one to be located in the St. Louis office and one to be located in the Jefferson City office. Assistance provided under this section shall not include representing the claimant in a compensation hearing provided for in section 287.470.**]**

287.710. 1. Every such insurance carrier or self-insurer, on or before the first day of March of each year, shall make a return, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, stating the amount of all such gross premiums or deposits and credits during the year ending on the thirty-first day of December, next preceding.

2. The amount of the tax due for each calendar year shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the **[**tax**]** **application of the current calendar year's tax rate to the premium** for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance of the amount of tax due from the various companies or self-insurers, the director of revenue shall notify and assess each company or self-insurer the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company or self-insurer the amount of the estimated quarterly installments to be made for the calendar year. If the amount of the actual tax due for any year exceeds the total of the installments made for such year, the balance of the tax due shall be paid on the first day of June of the year following, together with the regular quarterly payment due at that time. If the total amount of the tax actually due is less than the total amount of the installments actually paid, the

amount by which the amount paid exceeds the amount due shall be credited against the tax for the following year and deducted from the quarterly installment otherwise due on the first day of June. If the March first quarterly installment made by a company or self-insurer is less than the amount assessed by the director of revenue, the difference will be due on June first, but no interest will accrue to the state on the difference unless the amount paid by the company or self-insurer is less than eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable year.

3. Upon the receipt of the returns and verification by the director of the division of workers' compensation as to the percent of tax to be imposed, the director of the department of insurance shall certify the amount of tax due from the various insurance carriers or self-insurers on the basis and at the rate provided in section 287.690, and make a schedule thereof, duplicate copies of which, properly certified by the director, shall be filed in the offices of the revenue department, the state treasurer, and the division of workers' compensation on or before the thirtieth day of April of each year. If the taxes provided for in this section are not paid, the department of revenue shall certify the fact to the director of the department of insurance who shall thereafter suspend the delinquent carriers of insurance or self-insurers from the further transaction of business in this state until the taxes are paid.

4. Upon receipt of the money all such moneys shall be deposited to the credit of the fund for the support of the division of workers' compensation.

5. The tax collected for implementing the workers' compensation fund, and any interest accruing thereon, under the police power of the state from those specified in sections 287.690, 287.715, and 287.730 shall be used for the purpose of making effective the law to relieve victims of industrial injuries from having individually to bear the burden of misfortune or becoming charges upon society and for the further purpose of providing for the physical rehabilitation of the victims of industrial injuries, and for no other purposes. It is hereby made the express duty of every person exercising any official authority or responsibility in and for the state of Missouri sacredly to safeguard and preserve all funds collected, and any interest accruing thereon, under and by virtue of sections 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

6. The funds created by virtue of sections 287.220, 287.690, 287.715, and 287.730 shall be exempt from the provisions of section 33.080, RSMo, specifically as they relate to the transfer of fund balances and any interest thereon to the ordinary revenue, and the director of the division of workers' compensation may direct the state treasurer to invest all or part of these funds in interest bearing accounts as provided in article IV, section 15 of the Constitution of the state of Missouri, and any unexpended balance in the second injury fund at the end of any appropriation period shall be a credit in the second injury fund and shall be the amount of the fund at the beginning of the appropriation period next immediately following.

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

2. **[**Prior to December 31, 1993, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the ensuing calendar year, and shall calculate the total amount of the annual surcharge to be imposed during the ensuing calendar year upon all workers' compensation holders and authorized self-insurers. The amount of the annual surcharge to be imposed upon all policyholders and self-insurers shall equal the moneys estimated by the director of the division of workers' compensation to be payable from the second injury fund during the calendar year for which the annual surcharge is to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.**]** Beginning October 31, **[**1993**] 2005**, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the **[**ensuing**] following** calendar year and shall calculate the total amount of the annual surcharge to be imposed **during the following calendar year** upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the **[**ensuing**] following** calendar year commencing with the calendar year beginning on January 1, **[**1994**] 2006**, shall be set at and calculated against a percentage**, not to exceed three percent,** of the policyholder's or self-insured's workers' compensation net deposits, net premiums**,** or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys **[**projected**]** to be paid from the second injury fund in the **[**ensuing**] following** calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section

537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders. **If the director of the division of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any year for the following year, any increase in the surcharge ultimately set by the director shall not be effective for any calendar quarter beginning less than sixty days from the date the director makes such determination.**

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

287.800. **[**All of the provisions of this chapter shall be liberally construed with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.**] 1. Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly.**

2. Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, and the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

287.801. Beginning January 1, 2006, only administrative law judges, the commission, and the appellate courts of this state shall have the power to review claims filed under this chapter.

287.804. 1. An employee may file an application with the division of workers' compensation to be excepted from the provisions of this chapter in respect to certain employees. The application shall include a written waiver by the employee of all benefits under this chapter and an affidavit by the employee and employer, that the employee and employer are members of a recognized religious sect or division, as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to acceptance of benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established under the Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj.

2. The waiver and affidavit required by subsection 1 of this section shall be made upon a form to be provided by the division of workers' compensation.

3. An exception granted in regards to a specific employee shall continue to be valid until such employee rescinds the prior rejection of coverage or the employee or sect ceases to meet the requirements of subsection 1 of this section.

4. Any rejection pursuant to subsection 1 of this section shall be prospective in nature and shall entitle the employee only to reject such benefits that accrue on or after the date the rescission form is received by the insurance company.

287.808. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense which is based upon a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

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

(1) "Administrative law judge", any person appointed pursuant to section 287.610 or section 621.015, RSMo, or any person who hereafter may have by law all of the powers now vested by law in administrative law judges appointed under the provisions of the workers' compensation law;

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

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

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

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

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

[(6) "Legal advisor", any person appointed or employed pursuant to section 287.600, 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate administrative law judge and any person appointed pursuant to section 286.010, RSMo, or pursuant to section 295.030, RSMo, and any attorney or legal counsel appointed or employed pursuant to section 286.070, RSMo;**]**

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

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

2. All moneys in the insolvency fund, exclusive of administrative costs reasonably necessary to conduct the business of the corporation, as determined at the discretion of the board, as described in section 287.867, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Missouri self-insurer which is unable to meet its workers' compensation benefit obligations and to defray the expenses of the fund.

3. The board of directors of the corporation shall direct the investment of the moneys in

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

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

5. Upon creation of the insolvency fund pursuant to the provisions of section 287.867, the corporation is obligated for payment of compensation under this chapter to insolvent members' employees resulting from incidents and injuries to the extent of covered claims existing prior to the issuance of an order of liquidation against the member employer with a finding of insolvency which has been entered by a court of competent jurisdiction in the member employer's state of domicile or of this state under the provisions of sections 375.950 to 375.990, RSMo, in which the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order; or prior to the date of determination by the board of directors that the member employer has fully expended all surety bonds, insurance or reinsurance, and all other available assets and is not able to pay compensation benefits at that time. All incidents giving rise to claims for compensation under this chapter must occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, except as provided for certain claims existing prior to August 28, 1992, pursuant to the provisions of subsection 7 of this section, and the employee must make timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Any proceeds derived by such claim of the employee in bankruptcy shall be an offset of any amounts due and owing to the employee under the workers' compensation law. Any such obligation of the corporation includes only the amount due the injured worker or workers of the insolvent member under this chapter. In no event is the corporation obligated to a claimant in an amount in excess of the obligation of the insolvent member employer. The corporation shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all the rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the corporation be liable for any penalties or interest. **The division, upon notice of a self-insured member filing bankruptcy, liquidation, or dissolution shall notify in writing any employee**

of the self-insured member, who has an open claim for compensation or first report of injury filed with the division, at that employee's last known address of his or her obligation to file a proof of claim with the court of jurisdiction and of the need of the employee to provide the guaranty fund and the division with the records set out in this section. Any claimant claiming benefits under this chapter against an insolvent self-insured member of the Missouri Private Sector and Individual Guaranty Corporation shall, before the division of workers' compensation for the state of Missouri attaches jurisdiction, file with the bankruptcy court having jurisdiction over the bankruptcy of the self-insured employer, a proof of claim or other claim forms required by the appropriate bankruptcy court to secure a claim against the bankrupt employer. Any such claimant shall provide to the Missouri private sector self-insurance guaranty corporation and to the division of workers' compensation a copy, certified by the bankruptcy court, attesting to the filing of such claim or claim forms. Certification shall include the date of alleged loss alleged against the bankrupt employer; description of injuries claimed; and date the claim or claims were filed with the bankruptcy court. Failure of the claimant to provide such information shall bar the division from invoking jurisdiction over any matter for which an employee may otherwise be entitled to benefits under this chapter.

6. The corporation may:

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

(2) Sue or be sued, including appearing in, prosecuting or defending and appealing any action on a claim brought by or against the corporation. The corporation shall have full rights of subrogation against any source of payment or reimbursement for payments by the corporation on behalf of a Missouri workers' compensation self-insurer. The corporation shall have a right of recovery through the maintenance of an action against any third party, other than a coemployee, who is in any way responsible or liable for injury or death to a covered worker. The corporation is also authorized to take all necessary action, including bringing an action at law or in equity to seek any available relief, including any action against any workers' compensation self-insurer, where the self-insurer has not paid all assessments levied by the division or the board of directors of the corporation. If the corporation is required to bring an action at law or in equity to enforce any obligations, rights or duties as regards a workers' compensation self-insurer, the court may award reasonable attorney's fees and costs to the corporation;

(3) Employ or retain such persons, including utilization of an in-house or a third-party administrator, fund manager, attorney, certified public accountant, auditor or other such person,

and sufficient clerical staff, experts, professional staff and equipment, including sharing clerical staff and other costs with the division upon a mutually agreed upon paid basis, as are necessary to handle the claims and perform other duties of the corporation;

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

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

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

(7) Review, on its own motion, or at the request of the director, all applications for initial and for membership renewal in the corporation, including financial or other appropriate background studies, actuarial studies, and other information or guidelines as may be necessary to ensure that the member is fully complying with the privileges of self-insurance. It shall be the primary duty of the division to provide adequate staff and equipment and technical assistance to thoroughly review initial applications and membership renewals through budgeted funds and initial applications and membership renewal application fees. The corporation, however, shall have the right to, in difficult cases or situations where the work load cannot be adequately done without the help of the corporation, to assist in any assessment of any applicant;

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

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

7. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the division, upon certification of the board of directors, shall levy assessments based on the annual modified standard premium, provided that no such assessments shall ever exceed, in the aggregate, from all members, an amount in excess of one million dollars at any given time, exclusive of all new members' assessments in the amounts collected for same, as is set forth in the plan of operation pursuant to the provisions of section 287.870. Such assessments shall be made at a maximum annual assessment of one-sixth of one percent of the annual modified standard premium. The initial assessment shall be for an amount equal to six hundred thousand dollars, the amount of such fee to be levied over a

three-year period, one-third of the six hundred thousand dollars to be collected and received the first year, one-third to be collected and received in the second year, and one-third to be collected and received in the third year, the first year to commence as of the date of incorporation, assessments to be prorated on an annualized basis. The director of the division shall annually certify to the corporation the assessment percentage due from the members of the corporation. The director of the division and the board of the corporation shall within the procedures as specified in this section and as established for the premium tax billings, as provided in sections 287.690, 287.710, 287.715 and 287.730, notify, assess, and receive the assessments due from those members for the prior calendar year ending on the thirty-first day of December, with the exception that this annual assessment shall be payable in full, on or before the first day of March directly to the corporation. The department of insurance shall make available to the corporation or director of the division, data on the self-insured employer's workers' compensation administrative tax data for use in verification of the assessment as provided in this section. If assessments provided in this section are not paid, the corporation shall certify the fact to the division. Out of the first amounts assessed, there shall be set aside an amount equal to fifty thousand dollars, which shall be applied retroactively, before August 28, 1992, to be used and applied for the benefit of employees who have open, outstanding claims, in existence, which have not already been fully and completely settled or for which there has been an award of judgment rendered, and for which there are moneys due and owing. The amount of payment and allocation of funds shall be within the exclusive discretion of the director, such payments to be made on a reasonably timely basis, as the director received funds for such purpose. In addition, there shall be no reassessments against any member unless the director feels the current balance of the fund is insufficient or, after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the corporation, the amount held shall be less than four hundred thousand dollars, at which point the director shall raise assessments sufficient to bring the minimum amount of the fund back up to six hundred thousand dollars or such other amount not to exceed, in any event, one million dollars based upon a maximum annual assessment of one-sixth of one percent of the annual modified standard premium as shall be necessary to effectuate the purposes of the corporation at that time.

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

basis of contribution under the plan of operation as provided in section 287.870 and the applicable rules and regulations established pursuant thereto.

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

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

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

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

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

287.894. 1. All commercial insurance carriers licensed to sell workers' compensation insurance in the state shall provide to the Missouri **[**department of health and senior services**]** **division of workers' compensation** at least every six months workers' compensation medical claims history data as required by the **[**department**] division**. Such data shall be on electronic media and shall include the current procedural and medical terminology codes relating to the medical treatment, dates of treatment, demographic characteristics of the worker, type of health care provider rendering care, and charges for treatment. The **[**department**] division** may require a statistically valid sample of claims. Companies failing to provide such information as required by the **[**department**] division** are subject to section 287.740. The **[**department**] division** may, for purposes of verification, collect data from health care providers relating to the treatment of

workers' compensation injuries.

2. The Missouri consolidated health care plan as established in section 103.005, RSMo, shall, upon request of the **[**department**] division**, provide data comparable to that provided by the insurance carriers as required in subsection 1 of this section.

3. The data required in subsections 1 and 2 of this section shall be used by the **[**department**] division** to determine historical and statistical trends, variations and changes in health care costs associated with workers' compensation patients compared with nonworkers' compensation patients with similar injuries and conditions. Such data shall be readily available for review by users of the workers' compensation system, members of the general assembly, the Missouri division of workers' compensation and the department of insurance. Any data released by the **[**department**] division** shall not identify a patient or health care provider.

4. Any additional personnel or equipment needed by the **[**department**] division** to meet the requirements of this section shall be paid for by the workers' compensation fund.

287.957. The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed **[**five hundred**] one thousand** dollars and the employer pays all of the total medical costs and there is no lost time from the employment**, other than the first three days or less of disability under subsection 1 of section 287.160,** and no claim is filed. **An employer opting to utilize this provision maintains an obligation to report the injury under subsection 1 of section 287.380.**

287.972. 1. The advisory organization, in addition to other activities not prohibited, may:

(1) Develop statistical plans, including class definitions;

(2) Collect statistical data from members, subscribers or any other source;

(3) Prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plans as specified in subsection 2 of this section. Such data and adjustments should be in sufficient detail so as to permit insurers to modify such pure

premiums based on their own rating methods or interpretations of underlying data;

(4) Prepare and distribute manuals of rating rules and rating schedules that do not contain any rules or schedules including final rates of permitting calculation of final rates without information outside the manuals;

(5) Distribute information that is filed with the director and open to public inspection;

(6) Conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;

(7) Prepare and file policy forms and endorsements and consult with members, subscribers and others relative to their use and application;

(8) Collect, compile and distribute past and current prices of individual insurers if such information is made available to the general public;

(9) Conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) Prepare and distribute rules and rating values for the uniform experience rating plan. Calculate and disseminate individual risk premium modifications;

(11) Assist an individual insurer to develop rates, supplementary rate information or supporting information when so authorized by the individual insurer.

2. **[**The director of insurance may require that no pure premium rate data, adjusted for loss development and loss trending, be distributed, except in a format which allows a comparison of such data, adjusted for loss development without any trend factor, with a trend factor developed by the advisory organization, and with a trend factor developed by the director, for each of the various job classifications.**]** Such data may be used, at their option, by workers' compensation insurers, self-funded employers, or self-insured groups of employers, to determine their own final rates or charges for workers' compensation insurance coverage. **The director of insurance may formulate trend factors that allow for a comparison with trend factors developed by the advisory organization for each of the job classifications.** The authority to establish such a reporting format shall not be interpreted as allowing the director of insurance to set final rates where a competitive market exists under the provisions of sections 287.930 to 287.975.

[287.616. 1. Legal advisors shall act in the capacity of associate administrative law judges with the power to approve agreements of settlement or compromise entered into pursuant to section 287.390.

2. Legal advisors shall also act in the capacity of associate administrative law judges in those offices having only one administrative law judge and shall have jurisdiction to hear and determine claims upon original hearing. With respect to original hearings the legal advisor shall have such jurisdiction and powers as are vested in the division of workers' compensation under other

sections of this chapter.**]**

Section B. The repeal and reenactment of sections 287.612 and 287.615, and the repeal of section 287.616 of section A of this act shall become effective on January 1, 2006.