

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 1 & 130
93RD GENERAL ASSEMBLY

Reported from the Committee on Workforce Development and Workplace Safety, February 24, 2005, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 1 & 130 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0220L.14C

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, 287.640, 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.

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287.615, 287.616, 287.640, 287.710, 287.715, 287.800, 287.812, 287.865, 287.894, 287.957, and 287.972, RSMo, are repealed and thirty-nine new sections enacted in lieu thereof, to be known as sections 286.020, 287.020, 287.040, 287.041, 287.042, 287.063, 287.067, 287.110, 287.120,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, 287.640, 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

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.

2 that when first constituted one member shall be appointed for two years, one for four years and
3 one for six years, and thereafter all vacancies shall be filled as they occur. The terms of office
4 of the first members of the commission shall begin on the date of their appointment which shall
5 be within thirty days after the effective date of this chapter. Any member appointed to fill a
6 vacancy occurring prior to the expiration of the term for which the member's predecessor was
7 appointed, shall be appointed by the governor, by and with the advice and consent of the senate,
8 for the remainder of such term. **Every commission member appointed to serve, either as a**
9 **permanent, an acting, a temporary, an interim, or as a legislative recess appointment, shall**
10 **appear for confirmation before the senate within thirty days after the senate next convenes**
11 **for regular session. Any member appointed or serving the labor and industrial relations**
12 **commission without senate confirmation after said time period shall immediately resign**
13 **from the commission and shall not be reappointed to the same office or position in**
14 **accordance with section 51 of article IV of the Missouri Constitution.** The governor may
15 remove any member of the commission, after notice and hearing, for gross inefficiency, mental
16 or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office,
17 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
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,
3 express or implied, oral or written, or under any appointment or election, including executive
4 officers of corporations. Any reference to any employee who has been injured shall, when the
5 employee is dead, also include his dependents, and other persons to whom compensation may
6 be payable. The word "employee" shall also include all minors who work for an employer,
7 whether or not such minors are employed in violation of law, and all such minors are hereby
8 made of full age for all purposes under, in connection with, or arising out of this chapter. The
9 word "employee" shall not include an individual who is the owner **as defined in subsection 43**
10 **of section 301.010, RSMo,** and operator of a motor vehicle which is leased or contracted with
11 a driver to a for-hire [common or contract] motor [vehicle] carrier operating within a commercial
12 zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by
13 the [motor carrier and railroad safety division of the department of economic development]
14 **Missouri department of transportation** or by the [interstate commerce commission] **United**
15 **States Department of Transportation, or any of its subagencies.**

16 2. The word "accident" as used in this chapter shall[, unless a different meaning is clearly
17 indicated by the context, be construed to] mean an unexpected [or unforeseen identifiable event
18 or series of events happening suddenly and violently, with or without human fault,] **traumatic**
19 **event or unusual strain identifiable by time and place of occurrence** and producing at the
20 time objective symptoms of an injury **caused by a specific event during a single work shift.**

21 [An injury is compensable if it is clearly work related. An injury is clearly work related if work
22 was a substantial factor in the cause of the resulting medical condition or disability.] An injury
23 is not compensable [merely] because work was a triggering or precipitating factor.

24 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
25 out of and in the course of employment. [The injury must be incidental to and not independent
26 of the relation of employer and employee. Ordinary, gradual deterioration or progressive
27 degeneration of the body caused by aging shall not be compensable, except where the
28 deterioration or degeneration follows as an incident of employment.] **An injury by accident is**
29 **compensable only if the accident was the prevailing factor in causing both the resulting**
30 **medical condition and disability. "The prevailing factor" is defined to be the primary**
31 **factor, in relation to any other factor, causing both the resulting medical condition and**
32 **disability.**

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

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

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

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

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

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

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

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

56 4. "Death" when mentioned as a basis for the right to compensation means only death

57 resulting from such violence and its resultant effects occurring within three hundred weeks after
58 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
59 shall not be applicable.

60 5. [Without otherwise affecting either the meaning or interpretation of the abridged
61 clause, "personal injuries arising out of and in the course of such employment", it is hereby
62 declared not to cover workers except while engaged in or about the premises where their duties
63 are being performed, or where their services require their presence as a part of such service.]
64 **Injuries sustained in company-owned or subsidized automobiles in accidents that occur**
65 **while traveling from the employee's home to the employer's principal place of business or**
66 **from the employer's principal place of business to the employee's home are not**
67 **compensable. The "extension of premises" doctrine is abrogated to the extent it extends**
68 **liability for accidents that occur on property not owned or controlled by the employer even**
69 **if the accident occurs on customary, approved, permitted, usual or accepted routes used**
70 **by the employee to get to and from their place of employment.**

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

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

76 [8.] 7. As used in this chapter and all acts amendatory thereof, the term "commission"
77 shall hereafter be construed as meaning and referring exclusively to the labor and industrial
78 relations commission of Missouri, and the term "director" shall hereafter be construed as
79 meaning the director of the department of insurance of the state of Missouri or such agency of
80 government as shall exercise the powers and duties now conferred and imposed upon the
81 department of insurance of the state of Missouri.

82 [9.] 8. The term "division" as used in this chapter means the division of workers'
83 compensation of the department of labor and industrial relations of the state of Missouri.

84 [10.] 9. For the purposes of this chapter, the term "minor" means a person who has not
85 attained the age of eighteen years; except that, for the purpose of computing the compensation
86 provided for in this chapter, the provisions of section 287.250 shall control.

87 10. **In applying the provisions of this chapter, it is the intent of the legislature to**
88 **reject and abrogate earlier case law interpretations on the meaning of or definition of**
89 **"accident", "occupational disease", "arising out of", and "in the course of the**
90 **employment" to include, but not be limited to, holdings in: *Bennett v. Columbia Health***
91 ***Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984**
92 **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

9 **section 501(c)(3) of the Internal Revenue Code or any governmental entity.**

2 **287.042. The changes to subsection 1 of section 287.020 are remedial and curative**
3 **and should be given that consideration.**

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

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

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

18 287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,
19 unless a different meaning is clearly indicated by the context, an identifiable disease arising with
2 or without human fault out of and in the course of the employment. Ordinary diseases of life to
3 which the general public is exposed outside of the employment shall not be compensable, except
4 where the diseases follow as an incident of an occupational disease as defined in this section.
5 The disease need not to have been foreseen or expected but after its contraction it must appear
6 to have had its origin in a risk connected with the employment and to have flowed from that
7 source as a rational consequence.

8 2. An **injury by** occupational disease is compensable **only** if [it is clearly work related
9 and meets the requirements of an injury which is compensable as provided in subsections 2 and
10 3 of section 287.020. An occupational disease is not compensable merely because work was a
11 triggering or precipitating factor.] **the occupational exposure was the prevailing factor in**
12 **causing both the resulting medical condition and disability. The "prevailing factor" is**
13 **defined to be the primary factor, in relation to any other factor, causing both the resulting**
14 **medical condition and disability. Ordinary, gradual deterioration, or progressive**
15 **degeneration of the body caused by aging or by the normal activities of day-to-day living**
16 **shall not be compensable.**

17 3. **An injury due to repetitive motion recognized as an occupational disease for**
18 **purposes of this chapter is compensable only if the occupational exposure was the**
19

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

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

29 [4.]5. "Radiation disability" is recognized as an occupational disease for purposes of this
30 chapter and is hereby defined to be that disability due to radioactive properties or substances or
31 to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the
32 use of or direct contact with radium or radioactive properties or substances or the use of or direct
33 exposure to Roentgen rays (X rays) or ionizing radiation.

34 [5.]6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of
35 the heart or cardiovascular system, including carcinoma, may be recognized as occupational
36 diseases for the purposes of this chapter and are defined to be disability due to exposure to
37 smoke, gases, carcinogens, inadequate oxygen, **of firefighters of a paid fire department or**
38 **police officers of a paid police department certified under chapter 590, RSMo,** or
39 psychological stress of firefighters of a paid fire department if a direct causal relationship is
40 established.

41 [6.]7. Any employee who is exposed to and contracts any contagious or communicable
42 disease arising out of and in the course of his or her employment shall be eligible for benefits
43 under this chapter as an occupational disease.

44 [7.]8. With regard to occupational disease due to repetitive motion, if the exposure to
45 the repetitive motion which is found to be the cause of the injury is for a period of less than three
46 months and the evidence demonstrates that the exposure to the repetitive motion with a prior
47 employer was the [substantial contributing] **prevailing** factor [to] **in causing** the injury, the prior
48 employer shall be liable for such occupational disease.

287.110. 1. This chapter shall apply to all cases within its provisions except those
2 exclusively covered by any federal law **and those addressed in subsection 11 of section**
3 **287.120.**

4 2. This chapter shall apply to all injuries received and occupational diseases contracted
5 in this state, regardless of where the contract of employment was made, and also to all injuries
6 received and occupational diseases contracted outside of this state under contract of employment
7 made in this state, unless the contract of employment in any case shall otherwise provide, and

8 also to all injuries received and occupational diseases contracted outside of this state where the
9 employee's employment was principally localized in this state **within thirteen weeks of the**
10 **injury.**

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

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

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

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

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

29 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
30 relating to **a drug-free workplace** or the use of alcohol or nonprescribed controlled drugs in the
31 workplace, [which rule or policy has been kept posted in a conspicuous place on the employer's
32 premises,] the compensation and death benefit provided for herein shall be [reduced fifteen
33 percent] **forfeited** if the injury was sustained in conjunction with the use of alcohol or

34 nonprescribed controlled drugs[; provided, that it is shown that the employee had actual
35 knowledge of the rules or policy so adopted by the employer and, provided further that the
36 employer had, prior to the injury, made a diligent effort to inform the employee of the
37 requirement to obey any reasonable rule or policy adopted by the employer]. **A health care
38 provider shall be compensated for all authorized services such provider rendered prior to
39 an order of forfeiture of compensation and death benefits under this subsection.**

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

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

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

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

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

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

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

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

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

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

73 10. The ability of a firefighter to receive benefits for psychological stress under section
74 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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

79 (1) **Accepts workers' compensation benefits under the laws of another state for the**
80 **injury or occupational disease;**

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

83 (3) **Indicates an intent to receive benefits for the injury or occupational disease**
84 **under another state's workers' compensation law.**

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

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

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

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

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

21 (5) That the employer will supply, upon request, additional information provided by the

22 division of workers' compensation;

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

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

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

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

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

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

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

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

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

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

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

14 (5) Knowingly make or cause to be made any false or fraudulent claim for payment of
15 a health care benefit;

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

18 (7) Knowingly present multiple claims for payment of the same health care benefit with
19 an intent to defraud;

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

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

25 **(10) Knowingly file a claim against the second injury fund in this state if the person**
26 **has filed a claim under the workers' compensation law of another state for the same injury**
27 **or occupational disease.**

28

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

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

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

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

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

38 3. Any person violating any of the provisions of subsections 1 and 2 of this section or
39 section 287.129, shall be guilty of a class A misdemeanor and, in addition, shall be liable to the
40 state of Missouri for a fine not to exceed ten thousand dollars or double the value of the fraud
41 whichever is greater. Any person who has previously pled guilty to or has been found guilty of
42 violating any of the provisions of subsections 1 and 2 of this section or the provisions of section
43 287.129 and who subsequently violates any of the provisions of subsections 1 and 2 of this
44 section or the provisions of section 287.129 shall be guilty of a class D felony.

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

51 5. Any employer [failing] **who knowingly fails** to insure his liability pursuant to this
52 chapter **with intent to defraud** shall be guilty of a class A misdemeanor and, in addition, shall
53 be liable to the state of Missouri for a penalty in an amount equal to twice the annual premium
54 the employer would have paid had such employer been insured or twenty-five thousand dollars,
55 whichever amount is greater. **After January 1, 2006**, any person who has previously pled guilty
56 to or has been found guilty of violating any of the provisions of this section or the provisions of
57 section 287.129 and who subsequently violates any of the provisions of this section or the
58 provisions of section 287.129 shall be guilty of a class D felony.

59 6. Any person may file a complaint alleging fraud or noncompliance with this chapter
60 with [a legal advisor in] the **director of the** division of workers' compensation. The [legal

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

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

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

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

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

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

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

13 (4) "Duplicating" a medical, hospital or rehabilitative insurance claim made by a health
14 care provider by resubmitting the claim through another health care provider in which the
15 original health care provider has an ownership interest.

16 Nothing in this section shall prohibit providers from making good faith efforts to ensure that
17 claims for reimbursement are coded to reflect the proper diagnosis and treatment.

18 2. If, by its own inquiries or as a result of complaints, the department of insurance has

19 reason to believe that a person has engaged in, or is engaging in, any fraudulent workers'
20 compensation insurance act contained in this section, it may administer oaths and affirmations,
21 serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect
22 evidence.

23 3. If the matter that the department of insurance seeks to obtain by request is located
24 outside the state, the person so requested may make it available to the division or its
25 representative to examine the matter at the place where it is located. The department may
26 designate representatives, including officials of the state in which the matter is located, to inspect
27 the matter on its behalf, and it may respond to similar requests from officials of other states.

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

287.140. 1. In addition to all other compensation **paid to the employee under this**
2 **section**, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. If the employee desires, he shall have the right to select his own physician, surgeon,
6 or other such requirement at his own expense. Where the requirements are furnished by a public
7 hospital or other institution, payment therefor shall be made to the proper authorities. Regardless
8 of whether the health care provider is selected by the employer or is selected by the employee
9 at the employee's expense, the health care provider shall have the affirmative duty to
10 communicate fully with the employee regarding the nature of the employee's injury and
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to
12 perform such duty to communicate shall constitute a disciplinary violation by the provider
13 subject to the provisions of chapter 620, RSMo. When an employee is required to submit to
14 medical examinations or necessary medical treatment at a place outside of the local or
15 metropolitan area from the **employee's principal** place of [injury or the place of his residence]
16 **employment**, the employer or its insurer shall advance or reimburse the employee for all
17 necessary and reasonable expenses; except that an injured employee who resides outside the state
18 of Missouri and who is employed by an employer located in Missouri shall have the option of
19 selecting the location of services provided in this section either at a location within one hundred
20 miles of the injured employee's residence, place of injury or place of hire by the employer. The
21 choice of provider within the location selected shall continue to be made by the employer. In

22 case of a medical examination if a dispute arises as to what expenses shall be paid by the
23 employer, the matter shall be presented to the legal advisor, the administrative law judge or the
24 commission, who shall set the sum to be paid and same shall be paid by the employer prior to
25 the medical examination. In no event, however, shall the employer or its insurer be required to
26 pay transportation costs for a greater distance than two hundred fifty miles each way from place
27 of treatment. [In addition to all other payments authorized or mandated under this subsection,
28 when an employee who has returned to full-time employment is required to submit to a medical
29 examination for the purpose of evaluating permanent disability, or to undergo physical
30 rehabilitation, the employer or its insurer shall pay a proportionate weekly compensation benefit
31 based on the provisions of section 287.180 for such wages that are lost due to time spent
32 undergoing such medical examinations or physical rehabilitation, except that where the employee
33 is undergoing physical rehabilitation, such proportionate weekly compensation benefit payment
34 shall be limited to a time period of no more than twenty weeks. For purposes of this subsection
35 only, "physical rehabilitation" shall mean the restoration of the seriously injured person as soon
36 as possible and as nearly as possible to a condition of self-support and maintenance as an
37 able-bodied worker. Determination as to what care and restoration constitutes physical
38 rehabilitation shall be the sole province of the treating physician. Should the employer or its
39 insurer contest the determination of the treating physician, then the director shall review the case
40 at question and issue his determination. Such determination by the director shall be appealable
41 like any other finding of the director or the division. Serious injury includes, but is not limited
42 to, quadriplegia, paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury
43 or nonuse, and back injuries not amenable alone to recognized medical and surgical procedures.]

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

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

57 4. The division shall, by regulation, establish methods to resolve disputes concerning the

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

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

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

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

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

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

91 10. The employer shall have the right to select the licensed treating physician, surgeon,
92 chiropractic physician, or other health care provider; provided, however, that such physicians,
93 surgeons or other health care providers shall offer only those services authorized within the scope

94 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
95 apply.

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

101 (1) The patient;

102 (2) The employer of the patient with workers' compensation liability for the injury or
103 disease being treated;

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

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

106 12. Violation of subsection 11 of this section is a class A misdemeanor.

107 13. (1) No hospital, physician or other health care provider, other than a hospital,
108 physician or health care provider selected by the employee at his own expense pursuant to
109 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
110 services rendered to an employee due to a work-related injury or report to any credit reporting
111 agency any failure of the employee to make such payment, when an injury covered by this
112 chapter has occurred and such hospital, physician or health care provider has received actual
113 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
114 shall be deemed received by the hospital, physician or health care provider five days after
115 mailing by certified mail by the employer or insurer to the hospital, physician or health care
116 provider.

117 (2) The notice shall include:

118 (a) The name of the employer;

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

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

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

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

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

130 to the labor and industrial relations commission, until a decision is rendered by that commission.

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

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

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

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

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

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

8 section.

9 2. When a third person is liable for the death of an employee and compensation is paid
10 or payable under this chapter, and recovery is had by a dependent under this chapter either by
11 judgment or settlement for the wrongful death of the employee, the employer **shall have a**
12 **subrogation lien on any recovery and** shall receive or have credit for sums paid or payable
13 under this chapter to any of the dependents of the deceased employee to the extent of the
14 settlement or recovery by such dependents for the wrongful death. Recovery by the employer
15 and credit for future installments shall be computed using the provisions of subsection 3 of this
16 section relating to comparative fault of the employee.

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

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

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

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

40 5. No construction design professional who is retained to perform professional services
41 on a construction project or any employee of a construction design professional who is assisting
42 or representing the construction design professional in the performance of professional services
43 on the site of the construction project shall be liable for any injury resulting from the employer's

44 failure to comply with safety standards on a construction project for which compensation is
45 recoverable under the workers' compensation law, unless responsibility for safety practices is
46 specifically assumed by contract. The immunity provided by this subsection to any construction
47 design professional shall not apply to the negligent preparation of design plans or specifications.

48 6. Any provision in any contract or subcontract, where one party is an employer in the
49 construction group of code classifications, which purports to waive subrogation rights provided
50 under this section in anticipation of a future injury or death is hereby declared against public
51 policy and void. Each contract of insurance for workers' compensation shall require the insurer
52 to diligently pursue all subrogation rights of the employer and shall require the employer to fully
53 cooperate with the insurer in pursuing such recoveries, except that the employer may enter into
54 compromise agreements with an insurer in lieu of the insurer pursuing subrogation against
55 another party. The amount of any subrogation recovery by an insurer shall be credited against
56 the amount of the actual paid losses in the determination of such employer's experience
57 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
2 more than four hundred weeks during the continuance of such disability at the weekly rate of
3 compensation in effect under this section on the date of the injury for which compensation is
4 being made. The amount of such compensation shall be computed as follows:

5 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
6 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
7 the injured employee's average weekly earnings as of the date of the injury; provided that the
8 weekly compensation paid under this subdivision shall not exceed an amount equal to seventy
9 percent of the state average weekly wage, as such wage is determined by the division of
10 employment security, as of the July first immediately preceding the date of injury;

11 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
12 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
13 the injured employee's average weekly earnings as of the date of the injury; provided that the
14 weekly compensation paid under this subdivision shall not exceed an amount equal to
15 seventy-five percent of the state average weekly wage, as such wage is determined by the
16 division of employment security, as of the July first immediately preceding the date of injury;

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

22 (4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall

23 be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly
24 earnings as of the date of the injury; provided that the weekly compensation paid under this
25 subdivision shall not exceed an amount equal to one hundred five percent of the state average
26 weekly wage;

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

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

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

40 **4. If the employee is terminated from post-injury employment based upon the
41 employee's post-injury misconduct, neither temporary total disability nor temporary
42 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
2 for temporary total disability or temporary partial disability paid in accordance with sections
3 287.170 and 287.180, respectively, the employer shall pay to the employee compensation
4 computed at the weekly rate of compensation in effect under subsection 5 of this section on the
5 date of the injury for which compensation is being made, which compensation shall be allowed
6 for loss by severance, total loss of use, or proportionate loss of use of one or more of the
7 members mentioned in the schedule of losses.

8 SCHEDULE OF LOSSES

	Weeks
10 (1) Loss of arm at shoulder	232
11 (2) Loss of arm between shoulder and elbow	222
12 (3) Loss of arm at elbow joint	210
13 (4) Loss of arm between elbow and wrist	200
14 (5) Loss of hand at the wrist joint	175
15 (6) Loss of thumb at proximal joint	60
16 (7) Loss of thumb at distal joint	45

17 (8) Loss of index finger at proximal joint 45

18 (9) Loss of index finger at second joint 35

19 (10) Loss of index finger at distal joint 30

20 (11) Loss of either the middle or ring finger at the

21 proximal joint 35

22 (12) Loss of either the middle or ring finger at second

23 joint 30

24 (13) Loss of either the middle or ring finger at the distal

25 joint 26

26 (14) Loss of little finger at proximal joint 22

27 (15) Loss of little finger at second joint 20

28 (16) Loss of little finger at distal joint 16

29 (17) Loss of one leg at the hip joint or so near thereto as to

30 preclude the use of artificial limb 207

31 (18) Loss of one leg at or above the knee, where the stump

32 remains sufficient to permit the use of artificial limb 160

33 (19) Loss of one leg at or above ankle and below knee

34 joint 155

35 (20) Loss of one foot in tarsus 150

36 (21) Loss of one foot in metatarsus 110

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

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

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

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

41 (26) Loss of any other toe at distal joint 8

42 (27) Complete deafness of both ears 180

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

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

45 2. If the disability suffered in any of items (1) through (29) of the schedule of losses is

46 total by reason of severance or complete loss of use thereof the number of weeks of

47 compensation allowed in the schedule for such disability shall be increased by ten percent.

48 3. For permanent injuries other than those specified in the schedule of losses, the

49 compensation shall be paid for such periods as are proportionate to the relation which the other

50 injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at

51 the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss

52 of earning power. For the permanent partial loss of the use of an arm, hand, thumb, finger, leg,

53 foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm,
54 hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

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

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

62 (1) For all injuries occurring on or after September 28, 1983, but before August 28,
63 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
64 the employee's average weekly earnings as of the date of the injury; provided that the weekly
65 compensation paid under this subdivision shall not exceed an amount equal to forty-five percent
66 of the state average weekly wage, as such wage is determined by the division of employment
67 security, as of the July first immediately preceding the date of injury;

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

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

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

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

85 6. (1) "Permanent partial disability" means a disability that is permanent in nature and
86 partial in degree, and when payment therefor has been made in accordance with a settlement
87 approved either by an administrative law judge or by the labor and industrial relations
88 commission, a rating **established by medical finding, certified by a physician licensed under**

89 **chapter 334, RSMo, and** approved by an administrative law judge [or legal advisor], or an
90 award by an administrative law judge or the commission, the percentage of disability shall be
91 conclusively presumed to continue undiminished whenever a subsequent injury to the same
92 member or same part of the body also results in permanent partial disability for which
93 compensation under this chapter may be due; provided, however, the presumption shall apply
94 only to compensable injuries which may occur after August 29, 1959.

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

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

106 **(4) Any award of compensation shall be reduced by an amount proportional to the**
107 **permanent partial disability determined to be a preexisting disease or condition or**
108 **attributed to the natural process of aging sufficient to cause or prolong the disability or**
109 **need of treatment and the exertion necessary to precipitate the disability was more than**
110 **the employee's usual exertion in the course of the employee's regular employment.**

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

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

15 **division shall, by rule, adopt any superseding ANSI occupational hearing loss standards**
16 **regarding testing frequencies and decibel standards for measuring hearing loss.**

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

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

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

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

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

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

49 9. No consideration shall be given to the question of whether or not the ability of an
50 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,
2 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee
3 of such termination and shall advise the employee of the reason for such termination. If the
4 employee disputes the termination of such benefits, the employee may request a hearing before
5 the division and the division shall set the matter for hearing within sixty days of such request and
6 the division shall hear the matter on the date of hearing and no continuances or delays may be
7 granted except upon a showing of good cause or by consent of the parties. The division shall
8 render a decision within thirty days of the date of hearing. [Reasonable cost of recovery shall
9 be awarded to the prevailing party.] **If the division or the commission determines that any
10 proceedings have been brought, prosecuted, or defended without reasonable grounds, the
11 division may assess the whole cost of the proceedings upon the party who brought,
12 prosecuted, or defended them.**

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

**287.253. A monetary bonus, paid by an employer to an employee, of up to three
2 percent of the employee's yearly compensation from such employer shall not have the effect
3 of increasing the compensation amount used in calculating the employee's compensation
4 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
2 claims hereunder [from entering] **may enter** into voluntary agreements in settlement thereof, but
3 no agreement by an employee or his **or her** dependents to waive his **or her** rights under this
4 chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or
5 claim for compensation under this chapter be valid until approved by an administrative law judge
6 or the commission, nor shall an administrative law judge or the commission approve any
7 settlement which is not in accordance with the rights of the parties as given in this chapter. No
8 such agreement shall be valid unless made after seven days from the date of the injury or death.
9 **An administrative law judge or the commission shall approve an agreement entered into
10 more than forty-five days after the date of injury as valid and enforceable unless the**

11 **administrative law judge or the commission makes a specific finding of fact that the**
12 **agreement is manifestly unjust. Parties to claims under this chapter may enter into**
13 **voluntary agreements in settlement of those claims and such agreements shall be approved,**
14 **valid, and not subject to the requirements under subsection 6 of section 287.190.**

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

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

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

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

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

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

8 prejudiced thereby.] **No proceedings for compensation for any occupational disease or**
9 **repetitive trauma under this chapter shall be maintained unless written notice of the time,**
10 **place, and nature of the injury, and the name and address of the person injured, has been**
11 **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
2 the same may be modified from time to time to meet the needs of the case, and the same may be
3 kept open until a final award can be made, and if the same be not complied with, the amount
4 [thereof] **equal to the value of compensation ordered and unpaid** may be doubled in the final
5 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,
2 informal and summary, and without regard to the technical rules of evidence, and [no defect or
3 irregularity therein shall invalidate the same. Except as otherwise provided in this chapter,] **in**
4 **accordance with section 287.800.** All such proceedings shall be according to such rules and
5 regulations as may be adopted by the commission.

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

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

23 1999] **October 1, 2005.**

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

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

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

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

43 **4.** The administrative law judge review committee **members** shall [be composed of one
44 administrative law judge, who shall act as a peer judge on the committee and shall be domiciled
45 in a division office other than that of the judge being reviewed, one employee representative and
46 one employer representative, neither of whom shall] **not** have any direct or indirect employment
47 or financial connection with a workers' compensation insurance company, claims adjustment
48 company, health care provider nor be a practicing workers' compensation attorney. [The
49 employee representative and employer representative] **All members of the committee** shall have
50 a working knowledge of workers' compensation. [The employee and employer representative
51 shall serve for four-year staggered terms and they shall be appointed by the governor. The initial
52 employee representative shall be appointed for a two-year term. The administrative law judge
53 who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations
54 commission and shall not serve on any two consecutive reviews conducted by the committee.
55 Chairmanship of the committee shall rotate between the employee representative and the
56 employer representative every other year. Staffing for the administrative review committee shall
57 be provided, as needed, by the director of the department of labor and industrial relations and
58 shall be funded from the workers' compensation fund. The committee shall conduct a hearing

59 as part of any review of a referral or appeal made according to subsection 2 of this section.

60 4.] **5.** The committee shall [determine] within thirty days [whether an investigation shall
61 be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The
62 committee shall make a final referral to the governor pursuant to subsection 1 of this section
63 within two hundred seventy days of the receipt of a referral or appeal] **of completing each**
64 **performance audit make a recommendation to the governor. The performance audit shall**
65 **carry a recommendation of confidence or no-confidence for each administrative law judge.**
66 **The committee shall prepare, before January thirty-first of each year, a listing of the**
67 **performance audit results and submit a copy to the members of the general assembly.**

68 [5.] **6.** The administrative law judges appointed by the division shall only have
69 jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction
70 upon any review hearing, either in the way of an appeal from an original hearing or by way of
71 reopening any prior award, except to correct a clerical error in an award or settlement if the
72 correction is made by the administrative law judge within twenty days of the original award or
73 settlement. The labor and industrial relations commission may remand any decision of an
74 administrative law judge for a more complete finding of facts. The commission may also correct
75 a clerical error in awards or settlements within thirty days of its final award. With respect to
76 original hearings, the administrative law judges shall have such jurisdiction and powers as are
77 vested in the division of workers' compensation under other sections of this chapter, and
78 wherever in this chapter the word "commission", "commissioners" or "division" is used in
79 respect to any original hearing, those terms shall mean the administrative law judges appointed
80 under this section. When a hearing is necessary upon any claim, the division shall assign an
81 administrative law judge to such hearing. Any administrative law judge shall have power to
82 approve contracts of settlement, as provided by section 287.390, between the parties to any
83 compensation claim or dispute under this chapter pending before the division of workers'
84 compensation. Any award by an administrative law judge upon an original hearing shall have
85 the same force and effect, shall be enforceable in the same manner as provided elsewhere in this
86 chapter for awards by the labor and industrial relations commission, and shall be subject to
87 review as provided by section 287.480.

88 [6.] **7.** Any of the administrative law judges employed pursuant to this section may be
89 assigned on a temporary basis to the branch offices as necessary in order to ensure the proper
90 administration of this chapter.

91 [7.] **8.** All administrative law judges [and legal advisors] shall be required to participate
92 in, on a continuing basis, specific training that shall pertain to those elements of knowledge and
93 procedure necessary for the efficient and competent performance of the administrative law
94 judges' [and legal advisors'] required duties and responsibilities. Such training requirements shall

95 be established by the division subject to appropriations and shall include training in medical
96 determinations and records, mediation and legal issues pertaining to workers' compensation
97 adjudication. Such training may be credited toward any continuing legal education requirements.

98 [8.] **9. (1) The director of the division, in conjunction with the administrative law**
99 **judge review committee appointed by the governor, shall conduct an annual performance**
100 **audit of all administrative law judges. The audit results, stating the committee's decision**
101 **of confidence or no confidence of each administrative law judge shall be annually sent to**
102 **the governor and the members of the general assembly no later than the first week of each**
103 **legislative session. A review of no confidence following an annual audit allows the**
104 **governor to withdraw the appointment of the administrative law judge. The governor shall**
105 **not consider for reappointment any administrative law judge with an annual performance**
106 **audit of no confidence.**

107 (2) **The review committee shall consist of the division director, the public member**
108 **of the commission, who is an attorney, two members who represent employees and two**
109 **members who represent employers. The division director and the public member of**
110 **commission shall serve as co-chairpersons of the committee, and shall serve on the**
111 **committee during their time of employment in their respective positions. The term of**
112 **service for all other members of the review committee shall be two years, with eligibility**
113 **for one additional appointment for two years by the governor. However, the first review**
114 **committee shall have one employee representative and one employer representative**
115 **appointed for a three-year term, with eligibility for one additional appointment of two**
116 **years by the governor. The review committee members shall all serve without**
117 **compensation. Necessary expenses for review committee members and all necessary**
118 **support services to the review committee shall be provided by the division.**

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

287.615. 1. The division may appoint or employ such persons as may be necessary to
2 the proper administration of this chapter. All salaries to clerical employees shall be fixed by the
3 division and approved by the labor and industrial relations commission. **Beginning January**
4 **1, 2006,** the annual salary of each [legal advisor,] administrative law judge, administrative law
5 judge in charge, and chief legal [advisor] **counsel** shall be as follows:

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

8 (2)] For [each] **any** chief legal [advisor] **counsel located at the division office in**
9 **Jefferson City, Missouri,** compensation at [the same rate as a legal advisor plus] two thousand

10 dollars **above eighty percent of the rate at which an associate circuit judge is compensated;**

11 ~~[(3)]~~ (2) For each administrative law judge, compensation at ninety percent of the rate
12 at which an associate division circuit judge is compensated;

13 ~~[(4)]~~ (3) For each administrative law judge in charge, compensation at the same rate as
14 an administrative law judge plus five thousand dollars.

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

287.640. 1. The division of workers' compensation shall be provided with offices at the
2 state capital, and St. Louis, St. Joseph, Cape Girardeau, Joplin, Springfield and Kansas City, and
3 in such other places, not to exceed two, as the division deems necessary for the efficient
4 disposition of the business of the division, in which offices its records shall be kept, but its
5 permanent records shall be kept in Jefferson City. The division shall also be provided with the
6 necessary office furniture, books, stationery and other supplies. The division and each of its
7 appointees and employees shall have reimbursed to them their actual traveling expenses and
8 disbursements in the discharge of their duties while away from their regular offices and places
9 of residence, but the same shall not be paid until verified by the affidavit of the person who
10 incurred them and approved by the division. All salaries, expenses and costs under this chapter
11 shall be paid monthly out of the state treasury from the fund for the support of the division of
12 workers' compensation of the department of labor and industrial relations.

13 2. [Unless the parties otherwise agree, all original hearings shall be held in the county,
14 or in a city not part of any county, where the accident occurred, or in any county, or such city,
15 adjacent thereto, or if the accident occurred outside of the state, then the hearing shall be held
16 in the county or city where the contract of employment was made, or the county where
17 employment of the employee was principally localized. If venue cannot otherwise be established
18 by this subsection, then the division shall determine the venue of the hearing. The division shall
19 determine the location of the hearing within the county, or city not within a county, of venue.

20 3.] Hearings [before the labor and industrial relations commission on review may] **shall**
21 be held at the place the **director of the division or the** commission determines, having due
22 regard for the convenience of the parties.

287.710. 1. Every such insurance carrier or self-insurer, on or before the first day of
2 March of each year, shall make a return, verified by the affidavit of its president and secretary
3 or other chief officers or agents, to the director of the department of insurance, stating the amount

4 of all such gross premiums or deposits and credits during the year ending on the thirty-first day
5 of December, next preceding.

6 2. The amount of the tax due for each calendar year shall be paid in four approximately
7 equal estimated quarterly installments, and a fifth reconciling installment. The first four
8 installments shall be based upon the [tax] **application of the current calendar year's tax rate**
9 **to the premium** for the immediately preceding taxable year ending on the thirty-first day of
10 December, next preceding. The quarterly installments shall be made on the first day of March,
11 the first day of June, the first day of September and the first day of December. Immediately after
12 receiving certification from the director of the department of insurance of the amount of tax due
13 from the various companies or self-insurers, the director of revenue shall notify and assess each
14 company or self-insurer the amount of taxes on its premiums for the calendar year ending on the
15 thirty-first day of December, next preceding. The director of revenue shall also notify and assess
16 each company or self-insurer the amount of the estimated quarterly installments to be made for
17 the calendar year. If the amount of the actual tax due for any year exceeds the total of the
18 installments made for such year, the balance of the tax due shall be paid on the first day of June
19 of the year following, together with the regular quarterly payment due at that time. If the total
20 amount of the tax actually due is less than the total amount of the installments actually paid, the
21 amount by which the amount paid exceeds the amount due shall be credited against the tax for
22 the following year and deducted from the quarterly installment otherwise due on the first day of
23 June. If the March first quarterly installment made by a company or self-insurer is less than the
24 amount assessed by the director of revenue, the difference will be due on June first, but no
25 interest will accrue to the state on the difference unless the amount paid by the company or
26 self-insurer is less than eighty percent of one-fourth of the total amount of tax assessed by the
27 director of revenue for the immediately preceding taxable year.

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

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

40 5. The tax collected for implementing the workers' compensation fund, and any interest
41 accruing thereon, under the police power of the state from those specified in sections 287.690,
42 287.715, and 287.730 shall be used for the purpose of making effective the law to relieve victims
43 of industrial injuries from having individually to bear the burden of misfortune or becoming
44 charges upon society and for the further purpose of providing for the physical rehabilitation of
45 the victims of industrial injuries, and for no other purposes. It is hereby made the express duty
46 of every person exercising any official authority or responsibility in and for the state of Missouri
47 sacredly to safeguard and preserve all funds collected, and any interest accruing thereon, under
48 and by virtue of sections 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

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

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

11 2. [Prior to December 31, 1993, the director of the division of workers' compensation
12 shall estimate the amount of benefits payable from the second injury fund during the ensuing
13 calendar year, and shall calculate the total amount of the annual surcharge to be imposed during
14 the ensuing calendar year upon all workers' compensation holders and authorized self-insurers.
15 The amount of the annual surcharge to be imposed upon all policyholders and self-insurers shall
16 equal the moneys estimated by the director of the division of workers' compensation to be
17 payable from the second injury fund during the calendar year for which the annual surcharge is
18 to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or
19 authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.]

20 Beginning October 31, [1993] **2005**, and each year thereafter, the director of the division of
21 workers' compensation shall estimate the amount of benefits payable from the second injury fund
22 during the [ensuing] **following** calendar year and shall calculate the total amount of the annual
23 surcharge to be imposed **during the following calendar year** upon all workers' compensation
24 policyholders and authorized self-insurers. The amount of the annual surcharge percentage to
25 be imposed upon each policyholder and self-insured for the [ensuing] **following** calendar year
26 commencing with the calendar year beginning on January 1, [1994] **2006**, shall be set at and
27 calculated against a percentage, **not to exceed three percent**, of the policyholder's or
28 self-insured's workers' compensation net deposits, net premiums, or net assessments for the
29 previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate,
30 as nearly as possible, one hundred ten percent of the moneys [projected] to be paid from the
31 second injury fund in the ensuing calendar year, less any moneys contained in the fund at the end
32 of the previous calendar year. All policyholders and self-insurers shall be notified by the division
33 of workers' compensation within ten calendar days of the determination of the surcharge percent
34 to be imposed for, and paid in, the following calendar year. The net premium equivalent for
35 individual self-insured employers and any group of political subdivisions of this state qualified
36 to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo,
37 shall be based on average rate classifications calculated by the department of insurance as taken
38 from premium rates filed by the twenty insurance companies providing the greatest volume of
39 workers' compensation insurance coverage in this state. For employers qualified to self-insure
40 their liability pursuant to this chapter, the rates filed by such group of employers in accordance
41 with subsection 2 of section 287.280 shall be the net premium equivalent. The director may
42 advance funds from the workers' compensation fund to the second injury fund if surcharge
43 collections prove to be insufficient. Any funds advanced from the workers' compensation fund
44 to the second injury fund must be reimbursed by the second injury fund no later than December
45 thirty-first of the year following the advance. The surcharge shall be collected from
46 policyholders by each insurer at the same time and in the same manner that the premium is
47 collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or
48 commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

51 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
52 insurers shall pay the amounts not later than the thirtieth day of the month following the end of
53 the quarter in which the amount is received from policyholders. **If the director of the division
54 of workers' compensation fails to calculate the surcharge by the thirty-first day of October
55 of any year for the ensuing year, any increase in the surcharge ultimately set by the**

56 **director shall not be effective for any calendar quarter beginning less than sixty days from**
57 **the date the director makes such determination.**

58 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer
59 fails to make timely transfer to the [director of revenue] **division** of surcharges actually collected
60 from policyholders, as required by this section, a penalty of one-half of one percent of the
61 surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured
62 or insurer. Penalties assessed under this subsection shall be collected in a civil action by a
63 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
2 to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to
3 rules, regulations, requirements, awards, orders or decisions of the division and the commission,
4 and they shall not be declared inoperative, illegal or void for any omission of a technical nature
5 in respect thereto.] **1. Administrative law judges, associate administrative law judges, legal**
6 **advisors, the labor and industrial relations commission, the division of workers'**
7 **compensation, and any reviewing courts shall construe the provisions of this chapter**
8 **strictly.**

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

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

287.804. **1. An employee may file an application with the division of workers'**
2 **compensation to be excepted from the provisions of this chapter in respect to certain**
3 **employees. The application shall include a written waiver by the employee of all benefits**
4 **under this chapter and an affidavit by the employee and employer, that the employee and**
5 **employer are members of a recognized religious sect or division, as defined in 26 U.S.C.**
6 **1402(g), by reason of which they are conscientiously opposed to acceptance of benefits of**
7 **any public or private insurance which makes payments in the event of death, disability, old**
8 **age, or retirement or makes payments toward the cost of, or provides services for, medical**
9 **bills, including the benefits of any insurance system established under the Federal Social**
10 **Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj.**

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

13 **3. An exception granted in regards to a specific employee shall continue to be valid**

14 until such employee rescinds the prior rejection of coverage or the employee or sect ceases
15 to meet the requirements of subsection 1 of this section.

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

287.808. The burden of establishing any affirmative defense is on the employer.
2 The burden of proving an entitlement to compensation under this chapter is on the
3 employee or dependent. In asserting any claim or defense which is based upon a factual
4 proposition, the party asserting such claim or defense must establish that such proposition
5 is more likely to be true than not true. A dominant compliance with the provisions of this
6 chapter shall be sufficient to give effect to rules, regulations, requirements, awards, orders
7 or decisions of the division and the commission, and they shall not be declared inoperative,
8 illegal or void for any omission of a technical nature in respect thereto.

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

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

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

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

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

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

24 (6) "Division", the division of workers' compensation of the state of Missouri;
25 [(6) "Legal advisor", any person appointed or employed pursuant to section 287.600,
26 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate administrative law
27 judge and any person appointed pursuant to section 286.010, RSMo, or pursuant to section
28 295.030, RSMo, and any attorney or legal counsel appointed or employed pursuant to section
29 286.070, RSMo;]

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

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

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

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

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

21 5. Upon creation of the insolvency fund pursuant to the provisions of section 287.867,
22 the corporation is obligated for payment of compensation under this chapter to insolvent
23 members' employees resulting from incidents and injuries to the extent of covered claims
24 existing prior to the issuance of an order of liquidation against the member employer with a
25 finding of insolvency which has been entered by a court of competent jurisdiction in the member
26 employer's state of domicile or of this state under the provisions of sections 375.950 to 375.990,
27 RSMo, in which the order of liquidation has not been stayed or been the subject of a writ of

28 supersedeas or other comparable order; or prior to the date of determination by the board of
29 directors that the member employer has fully expended all surety bonds, insurance or
30 reinsurance, and all other available assets and is not able to pay compensation benefits at that
31 time. All incidents giving rise to claims for compensation under this chapter must occur during
32 the year in which such insolvent member is a member of the guaranty fund and was assessable
33 pursuant to the plan of operation, except as provided for certain claims existing prior to August
34 28, 1992, pursuant to the provisions of subsection 7 of this section, and the employee must make
35 timely claim for such payments according to procedures set forth by a court of competent
36 jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Any
37 proceeds derived by such claim of the employee in bankruptcy shall be an offset of any amounts
38 due and owing to the employee under the workers' compensation law. Any such obligation of
39 the corporation includes only the amount due the injured worker or workers of the insolvent
40 member under this chapter. In no event is the corporation obligated to a claimant in an amount
41 in excess of the obligation of the insolvent member employer. The corporation shall be deemed
42 the insolvent employer for purposes of this chapter to the extent of its obligation on the covered
43 claims and, to such extent, shall have all the rights, duties, and obligations of the insolvent
44 employer as if the employer had not become insolvent. However, in no event shall the
45 corporation be liable for any penalties or interest. **The division, upon notice of a self-insured**
46 **member filing bankruptcy, shall notify in writing any employee of the self-insured**
47 **member, who has an open claim for compensation or first report of injury filed with the**
48 **division, at that employee's last known address of his or her obligation to file a proof of**
49 **claim with the court of jurisdiction and of the need of the employee to provide the guaranty**
50 **fund and the division with the records set out in this section. Any claimant claiming**
51 **benefits under this chapter against an insolvent self-insured member of the Missouri**
52 **Private Sector and Individual Guaranty Corporation shall, before the division of workers'**
53 **compensation for the state of Missouri attaches jurisdiction, file with the bankruptcy court**
54 **having jurisdiction over the bankruptcy of the self-insured employer, a proof of claim or**
55 **other claim forms required by the appropriate bankruptcy court to secure a claim against**
56 **the bankrupt employer. Any such claimant shall provide to the Missouri private sector**
57 **self-insurance guaranty corporation and to the division of workers' compensation a copy,**
58 **certified by the bankruptcy court, attesting to the filing of such claim or claim forms.**
59 **Certification shall include the date of alleged loss alleged against the bankrupt employer;**
60 **description of injuries claimed; and date the claim or claims were filed with the**
61 **bankruptcy court. Failure of the claimant to provide such information shall bar the**
62 **division from invoking jurisdiction over any matter for which an employee may otherwise**
63 **be entitled to benefits under this chapter.**

64 6. The corporation may:

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

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

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

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

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

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

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

100 thoroughly review initial applications and membership renewals through budgeted funds and
101 initial applications and membership renewal application fees. The corporation, however, shall
102 have the right to, in difficult cases or situations where the work load cannot be adequately done
103 without the help of the corporation, to assist in any assessment of any applicant;

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

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

110 7. To the extent necessary to secure funds for the payment of covered claims and also
111 to pay the reasonable costs to administer them, the division, upon certification of the board of
112 directors, shall levy assessments based on the annual modified standard premium, provided that
113 no such assessments shall ever exceed, in the aggregate, from all members, an amount in excess
114 of one million dollars at any given time, exclusive of all new members' assessments in the
115 amounts collected for same, as is set forth in the plan of operation pursuant to the provisions of
116 section 287.870. Such assessments shall be made at a maximum annual assessment of one-sixth
117 of one percent of the annual modified standard premium. The initial assessment shall be for an
118 amount equal to six hundred thousand dollars, the amount of such fee to be levied over a
119 three-year period, one-third of the six hundred thousand dollars to be collected and received the
120 first year, one-third to be collected and received in the second year, and one-third to be collected
121 and received in the third year, the first year to commence as of the date of incorporation,
122 assessments to be prorated on an annualized basis. The director of the division shall annually
123 certify to the corporation the assessment percentage due from the members of the corporation.
124 The director of the division and the board of the corporation shall within the procedures as
125 specified in this section and as established for the premium tax billings, as provided in sections
126 287.690, 287.710, 287.715 and 287.730, notify, assess, and receive the assessments due from
127 those members for the prior calendar year ending on the thirty-first day of December, with the
128 exception that this annual assessment shall be payable in full, on or before the first day of March
129 directly to the corporation. The department of insurance shall make available to the corporation
130 or director of the division, data on the self-insured employer's workers' compensation
131 administrative tax data for use in verification of the assessment as provided in this section. If
132 assessments provided in this section are not paid, the corporation shall certify the fact to the
133 division. Out of the first amounts assessed, there shall be set aside an amount equal to fifty
134 thousand dollars, which shall be applied retroactively, before August 28, 1992, to be used and
135 applied for the benefit of employees who have open, outstanding claims, in existence, which

136 have not already been fully and completely settled or for which there has been an award of
137 judgment rendered, and for which there are moneys due and owing. The amount of payment and
138 allocation of funds shall be within the exclusive discretion of the director, such payments to be
139 made on a reasonably timely basis, as the director received funds for such purpose. In addition,
140 there shall be no reassessments against any member unless the director feels the current balance
141 of the fund is insufficient or, after deducting the amount paid for or reserved for outstanding
142 claims and for administrative and other costs in managing the corporation, the amount held shall
143 be less than four hundred thousand dollars, at which point the director shall raise assessments
144 sufficient to bring the minimum amount of the fund back up to six hundred thousand dollars or
145 such other amount not to exceed, in any event, one million dollars based upon a maximum
146 annual assessment of one-sixth of one percent of the annual modified standard premium as shall
147 be necessary to effectuate the purposes of the corporation at that time.

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

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

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

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

169 12. Income derived from the corporation assets and investments shall vest in the
170 corporation and shall not inure, under any circumstances, to the benefit of any member, the
171 division of workers' compensation or any of its employees, or any other party other than an

172 employee. The corporation may reinvest that income as otherwise provided for investing
173 corporation assets. All such investments of corporation income shall be made in such a way as
174 to ensure the welfare of the employees of the private sector individual self-insurers that are
175 financially unable to meet their workers' compensation benefit obligations. In the event that the
176 corporation shall be dissolved, any surplus income previously held by the insolvency fund shall
177 be held in trust for the benefit of the employees of insolvent private sector individual
178 self-insurers in the state of Missouri.

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

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

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

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

22 4. Any additional personnel or equipment needed by the [department] **division** to meet
23 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,
2 provide adequate incentives for loss prevention, and shall provide for sufficient premium
3 differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive
4 means of providing prospective premium adjustment based upon measurement of the

5 loss-producing characteristics of an individual insured. An insurer may submit a rating plan or
6 plans providing for retrospective premium adjustments based upon an insured's past experience.
7 Such system shall provide for retrospective adjustment of an experience modification and
8 premiums paid pursuant to such experience modification where a prior reserved claim produced
9 an experience modification that varied by greater than fifty percent from the experience
10 modification that would have been established based on the settlement amount of that claim.
11 The rating plan shall prohibit an adjustment to the experience modification of an employer if the
12 total medical cost does not exceed [five hundred] **one thousand** dollars and the employer pays
13 all of the total medical costs and there is no lost time from the employment, **other than the first**
14 **three days or less of disability under subsection 1 of section 287.160**, and no claim is filed.
15 **An employer opting to utilize this provision maintains an obligation to report the injury**
16 **under subsection 1 of section 287.380.**

287.972. 1. The advisory organization, in addition to other activities not prohibited,
2 may:
3 (1) Develop statistical plans, including class definitions;
4 (2) Collect statistical data from members, subscribers or any other source;
5 (3) Prepare and distribute pure premium rate data, adjusted for loss development and loss
6 trending, in accordance with its statistical plans as specified in subsection 2 of this section. Such
7 data and adjustments should be in sufficient detail so as to permit insurers to modify such pure
8 premiums based on their own rating methods or interpretations of underlying data;
9 (4) Prepare and distribute manuals of rating rules and rating schedules that do not contain
10 any rules or schedules including final rates of permitting calculation of final rates without
11 information outside the manuals;
12 (5) Distribute information that is filed with the director and open to public inspection;
13 (6) Conduct research and collect statistics in order to discover, identify and classify
14 information relating to causes or prevention of losses;
15 (7) Prepare and file policy forms and endorsements and consult with members,
16 subscribers and others relative to their use and application;
17 (8) Collect, compile and distribute past and current prices of individual insurers if such
18 information is made available to the general public;
19 (9) Conduct research and collect information to determine the impact of benefit level
20 changes on pure premium rates;
21 (10) Prepare and distribute rules and rating values for the uniform experience rating plan.
22 Calculate and disseminate individual risk premium modifications;
23 (11) Assist an individual insurer to develop rates, supplementary rate information or
24 supporting information when so authorized by the individual insurer.

25 2. [The director of insurance may require that no pure premium rate data, adjusted for
26 loss development and loss trending, be distributed, except in a format which allows a comparison
27 of such data, adjusted for loss development without any trend factor, with a trend factor
28 developed by the advisory organization, and with a trend factor developed by the director, for
29 each of the various job classifications.] Such data may be used, at their option, by workers'
30 compensation insurers, self-funded employers, or self-insured groups of employers, to determine
31 their own final rates or charges for workers' compensation insurance coverage. **The director of**
32 **insurance may formulate trend factors that allow for a comparison with trend factors**
33 **developed by the advisory organization for each of the job classifications.** The authority to
34 establish such a reporting format shall not be interpreted as allowing the director of insurance
35 to set final rates where a competitive market exists under the provisions of sections 287.930 to
36 287.975.

2 [287.616. 1. Legal advisors shall act in the capacity of associate
3 administrative law judges with the power to approve agreements of settlement or
4 compromise entered into pursuant to section 287.390.

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