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Missouri Statutes

Chapter 287
Workers' Compensation Law

Citation of law.

287.010. This chapter shall be known as "The Workers' Compensation Law".

(RSMo 1939 § 3689, A.L. 1980 H.B. 1396)

Prior revision: 1929 § 3299

Definitions--intent to abrogate earlier case law.

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subdivision (42)* of section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time

objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. For the purposes of this chapter, "occupational diseases due to toxic exposure" shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis,

brochiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia, and myelodysplastic syndrome.

(RSMo 1939 § 3695, A.L. 1947 V. II p. 438; RSMo 1939 § 3744; A.L. 1945 p. 1996, A.L. 1959 S.B. 167, A.L. 1963 p. 408, A.L. 1967 p. 384, A.L. 1974 S.B. 417, A.L. 1977 S.B. 49, A.L. 1978 H.B. 1260, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130, A.L. 2008 H.B. 1883, A.L. 2013 S.B. 1)

Prior revision: 1929 §§ 3305, 3354

Effective 1-01-14

*Reprinted due to statutory reference to subsection 43 of section 301.010 changed to subdivision (42) of section301.010 to comply with section 3.060.

CROSS REFERENCE:

Division of motor carrier and railroad safety abolished, duties and functions transferred to highways and transportation commission and department of transportation, 226.008

Sheriffs and deputy sheriffs to be covered by workers'compensation--average earnings defined.

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

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

3. The "average earnings" of a sheriff or deputy sheriff is his annual salary, or fourteen dollars per day, whichever is greater.

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

(L. 1973 H.B. 534 § 1, A.L. 1980 H.B. 1396, H.B. 1596)

Employer defined.

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

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

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

(3) Any of the above-defined employers must have five or more employees to be deemed an employer for the purposes of this chapter unless election is made to become subject to the provisions of this chapter as provided in subsection 2 of section287.090, except that construction industry employers who erect, demolish, alter or repair improvements shall be deemed an employer for the purposes of this chapter if they have one or more employees. An employee who is a member of the employer's family within the third degree of affinity or consanguinity shall be counted in determining the total number of employees of such employer.

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

(RSMo 1939 § 3694, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1990 S.B. 751, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3304

(2010) Strict construction of definition of "employer" mandates that a co-employee does not qualify as such and thus is not entitled to invoke employer immunity. Robinson v. Hooker, 323 S.W.3d 418 (Mo.App. W.D.).

Partners, sole proprietors may elect to receive benefits forthemselves--employees, effect--insurer's liability--intent oflaw--withdrawal of employee from coverage, procedure.

287.035. 1. The benefits provided by this chapter resulting from work-related injuries shall apply to partners or sole proprietors, only when such partners or sole proprietors have individually elected to procure insurance policy protection for themselves against injuries sustained while in the pursuit of their vocation, profession or business.

2. An election by partners or sole proprietors to secure the protection of the benefits authorized by this chapter for themselves shall include their employees, if any, who are not eligible for compensation benefits except as provided by this section.

3. As respects the extension of benefits to employees pursuant to this section, there shall be general application of the compensation law; provided, however, section 287.030 shall be construed to encompass the limited application of this section to employers having less than five employees.

4. Insurers who underwrite the protection authorized by this section shall be directly and primarily liable for the benefits provided by this chapter.

5. It is the expressed intent of this section to allow the optional purchase of the protection for workers' injuries sustained by partners or sole proprietors, including their employees, while in the pursuit of their vocation, profession or business. As provided in this chapter, administrative and appellant jurisdiction shall be extended in regard to disagreements between injured individuals and their insurers, but any provision of this chapter requiring an employer-employee status, where none exists, is hereby waived to accomplish the limited application of this section.

6. (1) This chapter shall apply to any employee who is related to a partner or sole proprietor within the third degree of affinity or consanguinity unless such employee is withdrawn by the partner or sole proprietor from the coverage of the provisions of this chapter;

(2) Any partner or sole proprietor who wishes to withdraw from coverage any employee set forth in subdivision (1) of this subsection from the provisions of this chapter may do so by indicating such withdrawal from coverage under the provisions of a valid workers' compensation insurance policy by listing such employees to be withdrawn. The notice of withdrawal shall be in a manner and on a form as determined by the director of the department of insurance, financial institutions and professional registration. Such form shall require a list of those family member employees to be withdrawn, as described in subdivision (1) of this subsection. The withdrawal shall take effect and continue from the effective date of the insurance policy and any endorsements thereto up until the expiration date of the insurance policy or by written notice to the group self-insurer of which the employer is a member.

(L. 1983 H.B. 556, A.L. 1998 H.B. 1237, et al.)

Member of limited liability company to receive coverage, rejection ofcoverage, rescission of rejection.

287.037. Notwithstanding any other provision of law to the contrary, beginning January 1, 1997, those insurance companies providing coverage pursuant to chapter 287, to a limited liability company, as defined in section 347.015, shall provide coverage for the employees of the limited liability company who are not members of the limited liability company. Members of the limited liability company, as defined in section 347.015, shall also be provided coverage pursuant to chapter 287, but such members may individually elect to reject such coverage by providing a written notice of such rejection on a form developed by the department of insurance, financial institutions and professional registration to the limited liability company and its insurer. Failure to provide notice to the limited liability company shall not be grounds for any member to claim that the rejection of such coverage is not legally effective. A member who elects to reject such coverage shall not thereafter be entitled to workers' compensation benefits under the policy, even if serving or working in the capacity of an employee of the limited liability company, at least until such time as said member provides the limited liability company and its insurer with a written notice which rescinds the prior rejection of such coverage. The written notice which rescinds the prior rejection of such coverage shall be on a form developed by the department of insurance, financial institutions and professional registration. Any rescission shall be prospective in nature and shall entitle the member only to such benefits which accrue on or after the date the notice of rescission form is received by the insurance company.

(L. 1996 H.B. 1368 § 1)

Liability of employer--contractors, subcontractors.

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 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.

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 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 (42)* of section 301.010, and operator of a motor vehicle.

(RSMo 1939 § 3698, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3308

*Reprinted due to statutory reference to subdivision (43) of section 301.010 changed to subdivision (42) of section301.010 to comply with section 3.060.

(2009) Question of status as to statutory employee is not a matter of subject matter jurisdiction subject to a motion to dismiss; issue may be waived if not timely raised as an affirmative defense. McCracken v. Wal-Mart Stores East, LLP, 298 S.W.3d 473 (Mo.banc).

For-hire motor carrier not an employer of a lessor--definition.

287.041. Notwithstanding any provision of sections 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 or section 390.020 or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or its subagencies, be determined to be the employer of a lessor, as defined at 49 C.F.R. Section 376.2(f), or of a driver receiving remuneration from a lessor, as defined at 49 C.F.R. Section 376.2(f), provided, however, the term "for-hire motor carrier" shall in no event include an organization described in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

(L. 2005 S.B. 1 & 130)

Abrogation of case law regarding definition of owner.

287.043. In applying the provisions of subsection 1 of section 287.020 and subsection 4 of section 287.040, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "owner", as extended in the following cases: Owner Operator Independent Drivers Ass'n., Inc. v. New Prime, Inc., 133 S.W.3d 162 (Mo. App. S.D., 2004); Nunn v. C.C. Midwest, 151 S.W.3d 388 (Mo. App. W.D., 2004).

(L. 2005 S.B. 1 & 130)

Employers and employees affected by this act.

287.060. Every employer and every employee, except as in this chapter otherwise provided, shall be subject to the provisions of this chapter and respectively to furnish and accept compensation as herein provided.

(RSMo 1939 § 3690, A.L. 1953 p. 535, A.L. 1965 p. 397, A.L. 1974 S.B. 417)

Prior revision: 1929 § 3300

Occupational or business license for construction contractors, city orcounty--duty to require proof of workers' compensation coverage,when, effect.

287.061. 1. Any city or county which issues an occupational or business license for a contractor in the construction industry shall require a certificate of insurance for workers' compensation coverage or an affidavit, the form of which shall be developed by the division, signed by the applicant attesting that the contractor is exempt. No city or county shall have the duty to investigate any certificate of insurance or affidavit filed pursuant to this section.

2. Any contractor who fails to comply with the provisions of subsection 1 of this section shall be denied such a license until he or she furnishes a certificate of insurance.

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

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

(L. 1993 S.B. 251 § 15, A.L. 1998 H.B. 1237, et al.)

Occupational diseases, presumption of exposure--last employerliable--statute of limitations, starts running, when.

287.063. 1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 8 of section287.067.

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

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

(L. 1959 S.B. 167 § 287.201, A.L. 1974 S.B. 417, A.L. 1983 H.B. 243 & 260, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130)

(2002) Even though claimant's repetitive motion symptoms originated with prior employers, under last exposure rule the last employer to expose claimant is solely liable for such occupational diseases. Endicott v. Display Technologies, Inc., 77 S.W.3d 612 (Mo.banc).

Occupational disease defined--repetitive motion, loss of hearing,radiation injury, communicable disease, others.

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

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

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

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

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

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

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

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

(L. 1959 S.B. 167 § 287.201, A.L. 1980 H.B. 1396, A.L. 1983 H.B. 243 & 260, A.L. 1987 H.B. 564, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130, A.L. 2013 H.B. 404 & 614 merged with S.B. 1)

Effective 8-28-13 (H.B. 404 & 614)

1-01-14 (S.B. 1)

Occupational diseases directly related to cleanup of an illegal drugmanufacturing lab.

287.070. Disease of the lungs or respiratory tract or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of chapter 287, and are defined to be disability due to exposure to smoke, gases, or inadequate oxygen, for peace officers certified pursuant to chapter 590, or any person assisting in the cleanup or disposal if a direct causal relationship is established to exposure to an illegal controlled substance manufacturing laboratory.

(L. 1998 H.B. 1147, et al. § 6)

Exempt employers and occupations--election toaccept--withdrawal--notification required of insurance companies.

287.090. 1. This chapter shall not apply to:

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

(2) Qualified real estate agents and direct sellers as those terms are defined in Section 3508 of Title 26 United States Code;

(3) Employment where the person employed is an inmate confined in a state prison, penitentiary or county or municipal jail, or a patient or resident in a state mental health facility, and the labor or services of such inmate, patient, or resident are exclusively on behalf of the

state, county or municipality having custody of said inmate, patient, or resident. Nothing in this subdivision is intended to exempt employment where the inmate, patient or resident was hired by a state, county or municipal government agency after direct competition with persons who are not inmates, patients or residents and the compensation for the position of employment is not contingent upon or affected by the worker's status as an inmate, patient or resident;

(4) Except as provided in section 287.243, volunteers of a tax-exempt organization which operates under the standards of Section 501(c)(3) of the federal Internal Revenue Code, where such volunteers are not paid wages, but provide services purely on a charitable and voluntary basis;

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

2. Any employer exempted from this chapter as to the employer or as to any class of employees of the employer pursuant to the provisions of subdivision (3) of subsection 1 of section 287.030 or pursuant to subsection 1 of this section may elect coverage as to the employer or as to the class of employees of that employer pursuant to this chapter by purchasing and accepting a valid workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member. The election shall take effect on the effective date of the workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member, and continue while such policy or endorsement remains in effect or until further written notice to the group self-insurer of which the employer is a member. Any such exempt employer or employer with an exempt class of employees may withdraw such election by the cancellation or nonrenewal of the workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member. In the event the employer is electing out of coverage as to the employer, the cancellation shall take effect on the later date of the cancellation of the policy or the filing of notice pursuant to subsection 3 of this section.

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

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

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

(RSMo 1939 § 3693, A.L. 1957 p. 579, A.L. 1965 p. 397, A.L. 1971 S.B. 163, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1987 S.B. 261, A.L. 1988 H.B. 1073, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2009 H.B. 580)

Prior revision: 1929 § 3303

Effective 6-19-09

Legislative intent relative to other laws expressed.

287.100. Nothing in this chapter shall be construed as amending or repealing any statute or ordinance relating to associations or funds for the relief, pension, retirement, or other benefit of firemen, policemen, or other public employees, their widows, children or dependents, or as in any manner interfering with such associations, funds or benefits, now or hereafter established, but any such public employees, his widow, children or dependents, who shall receive compensation under this chapter shall have deducted from any benefit otherwise payable by any pension or other benefit fund to which the municipal corporation or other public employer contributes, a part of such benefit proportionate to the amount then being contributed to such fund by such employer, which deductions shall be made only during the compensation period. Nor shall anything in this chapter be construed as interfering with the right of any public employee to draw full wages, or collect and retain his full fees, so long as he

holds his office, appointment or employment, but the period during which the same are received after the injury shall be deducted from the period of compensation payments due hereunder.

(RSMo 1939 § 3696)

Prior revision: 1929 § 3306

Scope of chapter as to injuries and diseases covered.

287.110. 1. This chapter shall apply to all cases within its provisions except those exclusively covered by any federal law.

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

(RSMo 1939 § 3700, A.L. 1974 S.B. 417, A.L. 2005 S.B. 1 & 130, A.L. 2005 1st Ex. Sess. S.B. 4)

Prior revision: 1929 § 3310

Effective 12-14-05

Liability of employer set out--compensation increased or reduced,when--use of alcohol or controlled substances or voluntaryrecreational activities, injury from--effect oncompensation--mental injuries, requirements, firefighter stressnot affected.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident or occupational disease arising out of and in the course of the employee's employment. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury. The term

"accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

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

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

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

5. Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a reasonable effort to cause his or her employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs.

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

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the

voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption. An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

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

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

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

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

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

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

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

(RSMo 1939 § 3691, A.L. 1965 p. 397, A.L. 1969 H.B. 367, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1990 S.B. 751, A.L. 1992 H.B. 975, A.L. 2005 S.B. 1 & 130, A.L. 2012 H.B. 1540, A.L. 2013 S.B. 1)

Prior revision: 1929 § 3301

Effective 1-01-14

Insurers to establish safety engineering and management servicesprogram--requirements--division to maintain registry.

287.123. 1. Each insurance carrier writing workers' compensation insurance in this state shall establish a program whereby the carrier shall have available and shall provide to each employer obtaining workers' compensation coverage from such insurance carrier comprehensive safety engineering and management services upon a request made by the employer for such services.

2. Each insurance carrier writing workers' compensation insurance in this state shall provide the director of the department of labor and industrial relations with a written outline of the safety engineering and management program required to be established under subsection 1 of this section. Such program required to be established pursuant to subsection 1 of this section shall require certification by the director as to its adequacy in providing safety management and loss control to the employer. An insurance carrier's program required to be established pursuant to subsection 1 of this section shall be reviewed by the director at least annually to determine that it is delivering comprehensive services for safety education and the elimination of and protection against unsafe acts in the workplace and frequently recognized compensable worker injuries. An insurance carrier may establish such program required to be established pursuant to subsection 1 of this section through contracts with private safety engineering and management service companies in the state. Each insurance carrier shall collect annual data on what impact its program required to be established pursuant to subsection 1 of this section has had on compensable losses of the employers it insures, and such data shall be made available to the department of insurance, financial institutions and professional registration and the department of labor and industrial relations. When the employer requests services under such program and the insurance carrier provides such services, the insurance carrier shall report such services to the division.

3. At each time the division of workers' compensation receives notice from an employer that the employer has purchased workers' compensation insurance coverage from a different insurance carrier or has made an initial purchase of workers' compensation coverage, the

division shall notify the employer in writing of publicly or privately administered worker safety programs available in the state, unless such notice has been given in the prior twelve months.

4. The division shall maintain a registry of safety consultants and safety engineers certified by the department of labor and industrial relations and such registry shall be available for inspection by any employer in this state. Standards and requirements for certificates of safety consultants and safety engineers shall be determined by the department of labor and industrial relations by rule.

(L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2001 S.B. 521)

Department of labor and industrial relations, certification ofemployer safety programs, when.

287.124. The department of labor and industrial relations shall complete all applications filed prior to January 1, 1994, from employers for certification of employer safety programs.

(L. 1993 S.B. 251 § 36)

Effective 1-1-94

Toll-free telephone number for workers' compensation information,division to establish.

287.126. The division of workers' compensation shall establish a toll-free number for employees injured on the job to provide information regarding employees' rights, obligations and benefits under the Missouri workers' compensation law. Such number shall be accessible during normal business hours and shall be answered by personnel of the division of workers' compensation adequately trained to respond to such inquiries.

(L. 1992 H.B. 975)

Notice, employer to post, contents--division to provide notice,when--penalty.

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

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

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

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

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

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

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

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

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

(L. 1992 H.B. 975, A.L. 2005 S.B. 1 & 130)

Beginning January 1, 2017--Unlawful acts, penalties--fraud ornoncompliance, complaint may be filed, effect--fraud andnoncompliance unit established, purpose, confidentiality ofrecords--annual report, contents.

287.128. 1. It shall be unlawful for any person to knowingly present or cause to be presented any false or fraudulent claim for the payment of benefits pursuant to a workers' compensation claim.

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

3. It shall be unlawful for any person to:

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

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

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

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

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

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

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

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

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

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

(8) Knowingly make or cause to be made a false or fraudulent material statement to an investigator of the division in the course of the investigation of fraud or noncompliance. For the

purposes of subdivisions (6), (7), and (8) of this subsection, the term "statement" includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray or test results.

4. Any person violating any of the provisions of subsection 1 or 2 of this section shall be guilty of a class E felony. In addition, the person shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud whichever is greater. Any person violating any of the provisions of subsection 3 of this section shall be guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to ten thousand dollars. Any person who has previously been found guilty of violating any of the provisions of subsection 1, 2 or 3 of this section and who subsequently violates any of the provisions of subsection 1, 2 or 3 of this section shall be guilty of a class D felony.

5. It shall be unlawful for any person, company, or other entity to prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance. Any person violating any of the provisions of this subsection shall be guilty of a class E felony and, in addition, shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.

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

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

8. Any person may file a complaint alleging fraud or noncompliance with this chapter with a legal advisor in the division of workers' compensation. The legal advisor shall refer the complaint to the fraud and noncompliance unit within the division. The unit shall investigate all complaints and present any finding of fraud or noncompliance to the director, who may refer

the file to the attorney general. The attorney general may prosecute any fraud or noncompliance associated with this chapter. All costs incurred by the attorney general associated with any investigation and prosecution pursuant to this subsection shall be paid out of the workers' compensation fund. Any fines or penalties levied and received as a result of any prosecution under this section shall be paid to the workers' compensation fund. Any restitution ordered as a part of the judgment shall be paid to the person or persons who were defrauded.

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

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

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

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

(L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130, A.L. 2014 S.B. 491)

Effective 1-01-17

Until December 31, 2016--Unlawful acts, penalties--fraud ornoncompliance, complaint may be filed, effect--fraud andnoncompliance unit established, purpose, confidentiality ofrecords--annual report, contents.

287.128. 1. It shall be unlawful for any person to knowingly present or cause to be presented any false or fraudulent claim for the payment of benefits pursuant to a workers' compensation claim.

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

3. It shall be unlawful for any person to:

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

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

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

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

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

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

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

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

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

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

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

4. Any person violating any of the provisions of subsection 1 or 2 of this section shall be guilty of a class D felony. In addition, the person shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud whichever is greater. Any person violating any of the provisions of subsection 3 of this section shall be guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to ten thousand dollars. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsection 1, 2 or 3 of this section and who subsequently violates any of the provisions of subsection 1, 2 or 3 of this section shall be guilty of a class C felony.

5. It shall be unlawful for any person, company, or other entity to prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance. Any person violating any of the provisions of this subsection shall be guilty of a class D felony and, in addition, shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.

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

7. Any employer who knowingly fails to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a penalty in an amount up to three times the annual premium the employer would have paid had such employer been insured or up to fifty thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the

provisions of this section and who subsequently violates any of the provisions of this section shall be guilty of a class D felony.

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

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

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

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

12. By January 1, 2006, the attorney general shall forward to the division and the members of the general assembly the first edition of an annual report of the costs of prosecuting fraud

and noncompliance under this chapter. The report shall include the number of cases filed with the attorney general by county by the fraud and noncompliance unit, the number of cases prosecuted by county by the attorney general, fines and penalties levied and received, and all incidental costs.

(L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

*This section was amended by S.B. 491, 2014, effective 1-01-17. Due to the delayed effective date, both versions of this section are printed here.

Beginning January 1, 2017--False billing practices of health careprovider, defined, effect--department of insurance, financialinstitutions and professional registration, powers--penalty.

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

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

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

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

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

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

2. If, by its own inquiries or as a result of complaints, the department of insurance, financial institutions and professional registration has reason to believe that a person has engaged in, or is engaging in, any fraudulent workers' compensation insurance act contained in

this section, it may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect evidence.

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

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

(L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130, A.L. 2014 S.B. 491)

Effective 1-01-17

Until December 31, 2016--False billing practices of health careprovider, defined, effect--department of insurance, financialinstitutions and professional registration, powers--penalty.

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

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

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

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

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

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

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

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

(L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130)

*This section was amended by S.B. 491, 2014, effective 1-01-17. Due to the delayed effective date, both versions of this section are printed here.

Employer's liability joint and several--contribution allowable.

287.130. If the injury or death occurs while the employee is in the joint service of two or more employers, their liability shall be joint and several, and the employee may hold any or all of such employers. As between themselves such employers shall have contribution from each other in the proportion of their several liability for the wages of such employee but nothing in this chapter shall prevent such employers from making a different distribution of their proportionate contributions as between themselves.

(RSMo 1939 § 3697)

Prior revision: 1929 § 3307

Managed care services, department to establish program to certifyorganizations, procedures--effect on fees and services.

287.135. 1. The department of insurance, financial institutions and professional registration shall establish a program whereby managed care organizations in this state shall be certified by the department for the provision of managed care services to employers who voluntarily choose to use such organizations. The department shall report to the division of workers' compensation all managed care organizations certified pursuant to the provisions of this section. The division shall maintain a registry of certified managed care organizations that can be readily accessed by employers for the provision of managed care services. For the purposes of this section, the term "managed care organizations" shall mean organizations such as preferred provider organizations, health maintenance organizations and other direct employer/provider arrangements which have been certified by the department designed to provide incentives to medical care providers to manage the cost and use of care associated with claims covered by workers' compensation insurance.

2. The director of the department of insurance, financial institutions and professional registration shall promulgate rules which set out the approval criteria for certification of a managed care organization. Approval criteria shall take into consideration the adequacy of services that the organization will be able to offer the employer, the geographic area to be served, staff size and makeup of the organization in relation to both services offered and geographic location, access to health care providers, the adequacy of internal management and oversight, the adequacy of procedures for peer review, utilization review, and internal dispute resolution, including a method to resolve complaints by injured employees, medical providers, and insurers over the cost, necessity and appropriateness of medical services, the availability of case management services, and any other criteria as determined by the director. Thirty days prior to the annual anniversary of any current certification granted by the director, any managed care organization seeking continued certification shall file an application for recertification with the director, on a form approved by the director, accompanied by a filing fee established by the director by rule and any other materials specified by the director.

3. The director of the department of insurance, financial institutions and professional registration shall promulgate rules which set out the criteria under which the fees charged by a managed care organization shall be reimbursed by an employer's workers' compensation

insurer and which establish criteria providing for the coordination and integration between the managed care organization and the insurer of their respective internal operational systems relating to such matters as claim reporting and handling, medical case management procedures and billing. Such criteria shall require any such reimbursable fees to be reasonable in relation both to the managed care services provided and to the savings which result from those services. Such criteria shall discourage the use of fee arrangements which result in unjustified costs being billed for either medical services or managed care services. Insurers and managed care organizations shall be permitted to voluntarily negotiate and utilize alternative fee arrangements. Notwithstanding any provision of this subsection to the contrary, if an insurer and a managed care organization enter into a voluntary agreement that accomplishes the same purposes as this subsection, that insurer and that managed care organization with respect to that agreement shall not be required to meet the requirements of this subsection or regulations promulgated by the department pursuant to this subsection.

4. Any managed care organization, including any managed care organization that has been established or selected by or has contracted with a workers' compensation insurance carrier to provide managed care services to insured employers, that has previously been certified prior to August 28, 1993, by the director of the department of insurance, financial institutions and professional registration shall be deemed to have met the criteria set forth in this section.

5. The necessity and appropriateness of medical care services recommended or provided by providers shall be subject to review by the division of workers' compensation, upon application, following a decision by the managed care organization's utilization review and dispute resolution review and appeal procedure. The decision of the managed care organization relating to payment for such medical care services shall be subject to modification by the division of workers' compensation, after mediation conference or hearing, only upon showing that it was unreasonable, arbitrary or capricious.

(L. 1993 S.B. 251)

Employer to provide medical and other services, transportation,artificial devices, reactivation of claim--duties of health careproviders--refusal of treatment, effect--medicalevidence--division, commission responsibilities--notice to healthcare provider of workers' compensation claim, contents,effect--use of employee leave time.

287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may

reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

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

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

disputes as to such charges. A health care provider is bound by the determination upon the reasonableness of health care bills.

4. The division shall, by regulation, establish methods to resolve disputes concerning the reasonableness of medical charges, services, or aids. This regulation shall govern resolution of disputes between employers and medical providers over fees charged, whether or not paid, and shall be in lieu of any other administrative procedure under this chapter. The employee shall not be a party to a dispute over medical charges, nor shall the employee's recovery in any way be jeopardized because of such dispute. Any application for payment of additional reimbursement, as such term is used in 8 CSR 50-2.030, as amended, shall be filed not later than:

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

(2) One year from the date the first notice of dispute of the medical charge was received by the health care provider if such services were rendered after July 1, 2013. Notice shall be presumed to occur no later than five business days after transmission by certified United States mail.

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

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

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

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

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

10. The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider; provided, however, that such physicians, surgeons or other health care providers shall offer only those services authorized within the scope of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

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

(1) The patient;

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

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

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

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

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

(2) The notice shall include:

(a) The name of the employer;

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

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

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

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

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

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

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

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

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

(RSMo 1939 § 3701, A.L. 1951 p. 613, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1965 pp. 397, 413, A.L. 1977 S.B. 49, S.B. 399, A.L. 1980 H.B. 1396, A.L. 1983 H.B. 243 & 260, A.L. 1988 H.B. 1277, A.L. 1990 S.B. 751, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130, A.L. 2013 S.B. 1)

Prior revision: 1929 § 3311

Effective 1-01-14

Physical rehabilitation, defined, division of workers' compensationto administer--procedure.

287.141. 1. The purpose of this section is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical rehabilitation shall be under the control of and administered by the director of the division of workers' compensation. The division of workers' compensation shall make such rules and regulations as may be necessary to carry out the purposes of this section, subject to the approval of the labor and industrial relations commission of Missouri.

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and physical restoration services. No facility or institution shall be considered as qualified unless it is equipped to provide physical rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of industrial injury, and unless such facility or institution is operated under the supervision of a physician qualified to render physical rehabilitation service and is staffed with trained and qualified personnel and has received a certificate of qualification from the division of workers' compensation. No physician shall be considered as qualified unless he has had the experience prescribed by the division.

3. In any case of serious injury involving disability following the period of rendition of medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is necessary if the employer or insurer shall offer such physical rehabilitation to the injured employee and such physical rehabilitation is accepted by the employee, then in such case the director of the division of workers' compensation shall be immediately notified thereof and thereupon enter his approval to such effect, and the director of the division of workers' compensation shall requisition the payment of forty dollars per week benefit from the second injury fund in the state treasury to be paid to the employee while he is actually being rehabilitated, and shall immediately notify the state treasurer thereof by furnishing him with a copy of his order. But in no case shall the period of physical rehabilitation extend beyond twenty weeks except in unusual cases and then only by a special order of the division of workers' compensation for such additional period as the division may authorize.

4. In all cases where physical rehabilitation is offered and accepted or ordered by the division, the employer or insurer shall have the right to select any physician, facility, or institution that has been found qualified by the division of workers' compensation as above set forth.

5. If the parties disagree as to such physical rehabilitation treatment, where such treatment appears necessary, then either the employee, the employer, or insurer may file a request with the division of workers' compensation for an order for physical rehabilitation and the director of the division shall hear the parties within ten days after the filing of the request. The director of the division shall forthwith notify the parties of the time and place of the

hearing, and the hearing shall be held at a place to be designated at the discretion of the division. The director of the division may conduct such hearing or he may direct one of the administrative law judges to conduct same. Such hearing shall be informal in all respects. The director of the division shall, after considering all evidence at such hearing, within ten days make his order in the matter, either denying such request or ordering the employer or insurer within a reasonable time, to furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of the employer or insurer. When the order requires physical rehabilitation, it shall also include an order to requisition the payment of forty dollars per week out of the second injury fund in the state treasury to the injured employee during such time as such employee is actually receiving physical rehabilitation.

6. In every case where physical rehabilitation shall be ordered, the director of the division may, in his discretion, order the employer or insurer to furnish transportation to the injured employee to such rehabilitation facility or institution.

7. As used in this section, the term "physical rehabilitation" shall be deemed to include medical, surgical and hospital treatment in the same respect as required to be furnished under subsection 1 of section 287.140.

8. An appeal from any order of the division of workers' compensation hereby created to the appellate court may be taken and governed in all respects in the same manner as appeals in workers' compensation cases generally under section 287.495.

(L. 1951 p. 613, A.L. 1969 p. 391, A.L. 1971 H.B. 59, A.L. 1974 S.B. 417, A.L. 1975 H.B. 941, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1983 H.B. 243 & 260)

Vocational rehabilitation services, not mandatory--testingand assessment.

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

(L. 1990 S.B. 751, A.L. 2005 S.B. 1 & 130)

Definitions.

287.144. As used in sections 287.144 to 287.149, the following words mean:

(1) "Appropriate vocational testing", appropriate vocational testing may be included when a new job is necessary for consideration for an injured worker. Appropriate vocational testing may include intelligence, aptitude, achievement and interests tests, physical capacity assessment, musculoskeletal evaluation, audiometric evaluation, receptive and expressive components of language and work sample tests;

(2) "Director", the director of the division of workers' compensation;

(3) "Plan", a written proposal of services to be performed by a rehabilitation provider or practitioner which shall be based on the following objectives:

(a) Same job, same employer;

(b) Modified job, same employer;

(c) Different job, same employer;

(d) Same job, new employer;

(e) Modified job, new employer;

(f) New job, new employer;

(g) Reeducation and retraining. The plan shall include recommendations on the coordination of physical rehabilitation services, work hardening, vocational assessment, vocational counseling, job placement and occupational skill training, and independent living, if appropriate. Every plan shall consider appropriate vocational testing;

(4) "Qualification of medical or physical rehabilitation services", each facility, institution or agency program seeking to qualify to provide medical or physical rehabilitation to employees under this chapter shall be supervised by a physician with a speciality or subspeciality in the area of medicine which deals with the type of injury or disability it intends to treat;

(5) "Rehabilitation practitioner", an individual who has provided the director with the necessary proof of eligibility for qualification to render the services outlined in sections 287.144 to 287.149, and who has received a certification of qualification from the director. Practitioners shall be qualified in current vocational rehabilitation techniques and processes and familiar with current and appropriate medical interventions as evidenced by:

(a) A masters or doctorate degree in health-support services from an accredited institution, or a masters degree based on a curriculum and coursework designed to prepare a

person to practice as a vocational rehabilitation counselor or completion of a nationally accredited rehabilitation counselor internship program from a college or university, plus one year experience in vocational or physical rehabilitation;

(b) A baccalaureate degree in health-support services from an accredited institution, plus two years of experience in vocational or physical rehabilitation;

(c) Certification by the commission of rehabilitation counselor certification as a certified rehabilitation counselor. Practitioners having received their certified rehabilitation counselor certification prior to July 1, 1991, are eligible for licensure under chapter 337; or

(d) Internship for those with the education described in paragraphs (a) to (c) of this subdivision, but not experience, who are under the supervision of a qualified rehabilitation practitioner as defined in paragraphs (a) to (c) of this subdivision;

(6) "Rehabilitation provider", a vocational rehabilitation facility, institution or agency who offers to render services outlined in sections 287.144 to 287.149, and who shall be qualified in current vocational rehabilitation techniques and current and appropriate medical intervention techniques and certified by the director. Facilities and hospitals shall be accredited by the joint commission on accreditation of hospitals or the joint commission on accreditation of rehabilitation facilities or the American Osteopathic Association or the division of workers' compensation;

(7) "Suitable, gainful employment", employment or self-employment which, in the exercise of reasonable diligence, the employee will be able to obtain, to be determined in view of the nature and extent of the injury, the ability of the employee to compete in an open labor market;

(8) "Vocational rehabilitation assessments", a written statement of an employee's condition containing relevant documentation by the treating physician and information as indicated by a rehabilitation provider or practitioner of the employee's current and projected functional capacities and limitations, a job description provided by the employer of the position held at the time of injury, and background information including education, work history, career goals and any other relevant information.

(L. 1990 S.B. 751)

Effective 7-1-91

*No continuity with § 287.144 as repealed by L. 1990 S.B. 751 § B.

Rehabilitation practitioners, providers, certification of, how.

287.145. 1. Any person who has met the requirements in section 287.144 for a rehabilitation practitioner shall request in written form certification from the division. The division shall, after confirming that such person meets the qualifications of a rehabilitation practitioner, register and certify that the person is a certified rehabilitation practitioner.

2. Rehabilitation practitioners who do not work for an approved rehabilitation provider and who enter the vocational rehabilitation workers' compensation field after January 1, 1990, must obtain certification by the national board for certified counselor certification, or such person must meet the qualifications set forth by the Missouri division of workers' compensation.

3. Rehabilitation providers, as defined in section 287.144, must request in written form certification from the division. The division shall, upon confirming that the rehabilitation provider meets the requirements set forth in section 287.144, register and certify such provider.

(L. 1990 S.B. 751)

Effective 7-1-91

Employee authorized to receive vocational rehabilitation, when--dutiesof director.

287.146. 1. When an employee has sustained injury of sufficient severity, as provided in section 287.148, as the result of an injury arising out of and in the course of employment, the employee may, if authorized by the employer and the insurer, receive vocational rehabilitation services that are reasonably necessary to restore him to suitable, gainful employment.

2. The director shall administer sections 287.144 to 287.149, and shall:

(1) Maintain a registry of all qualified rehabilitation providers and rehabilitation practitioners whether public or private, including practitioners directly employed by an insurer, employer or self-insurer that render rehabilitation services to injured workers in this state;

(2) Analyze and report annually the results and cost of rehabilitation assignments;

(3) Review vocational rehabilitation plans and disapprove within fourteen days of receipt, if such plans do not meet criteria set forth in subsections 1 to 5* of section 287.148. The director may review plans and supervise the completion of approved plans;

(4) Review the progress of rehabilitation under the applicable plan filed by the rehabilitation practitioner or provider to determine if such plan meets the criteria set forth in subsections 1 to 5 of section 287.148 throughout the period the plan is in force;

(5) Appoint vocational rehabilitation monitors to assist in the implementation of subdivisions (3) to (5) of this subsection. A monitor shall have the qualifications as set forth for vocational rehabilitation practitioners and at least two years of experience in the field of workers' compensation disabilities.

(L. 1990 S.B. 751)

Effective 7-1-91

*Original rolls show "7" here, but § 287.148 contains only subsections 1 to 5.

Loss of suitable, gainful employment, how determined--severe injury,defined--plan, duration, costs allowed.

287.148. 1. Within one hundred and twenty days of the date of the injury, the employer shall determine whether the injured worker has sustained an injury that results in a loss of suitable, gainful employment. If the employer can determine that a loss of suitable, gainful employment has occurred, the employer may retain the services of a rehabilitation practitioner or a rehabilitation provider. A written determination of this finding shall be sent to the division of workers' compensation with copies to the employer, insurer, employee and their representatives on forms approved by the division. In the event that a determination cannot be established, within the one hundred and twenty days of the date of injury, due to the extent of the injury, the employer shall, as regulated by the division of workers' compensation, continue to review the status of the injured employee at appropriate intervals to determine his loss of suitable, gainful employment. If a rehabilitation practitioner or provider is retained by the employer, the rehabilitation practitioner or provider shall, within ninety days:

(1) Conduct an initial consultation with the injured employee, the employer and all treating physicians; and

(2) Perform a vocational rehabilitation assessment which shall include a plan if rehabilitation services are deemed to be required. A copy of the vocational rehabilitation plan shall be sent to the employer, insurer, employee, their representatives, the treating physicians and to the division.

2. The employer may retain a rehabilitation practitioner or provider who shall perform the services stated in subdivisions (1) and (2) of subsection 1 of this section, in the event of an injury of sufficient severity as determined by the treating physician, which interferes with occupational functioning that involves:

(1) The severe mangling, crushing, amputation or nerve impairment of a major extremity;

(2) A traumatic injury to the spinal cord that has caused or may cause paralysis or severe restriction of movement;

(3) Severe burns;

(4) A serious head injury with neurological or neuropsychological involvement; or

(5) Loss of sight in one or both eyes or loss of communication skills to include loss of hearing in both ears or loss of speech, or both.

3. The director shall immediately notify the employer that an injured employee may require the services of a rehabilitation practitioner or rehabilitation provider if he receives a surgeon's report and other medical reports supplied by the employer or employer's insurer that details an injury of sufficient severity as described in this section.

4. The initial period of a plan may not exceed a period of twenty-six weeks, but only the employer may extend the period of the plan for an additional twenty-six-week period. Any extension shall be consistent with the initial plan and limited to no greater goal than restoration of the employee to suitable, gainful employment. The maximum costs for implementing the vocational testing, vocational rehabilitation plan, or subsequent tuition or retraining shall not exceed five thousand dollars, exclusive of the costs of medical treatment, medical evaluation and fees paid to the vocational rehabilitation provider or practitioner, without the approval of the division.

5. If rehabilitation services require residence at or near the facility, institution or practitioner's office and away from the employee's customary residence, reasonable and necessary costs of board, lodging and travel shall be borne by the employer or insurer. Rehabilitation services shall be performed by practitioners and providers approved by the director within this state when such facilities or practitioners are reasonably available, or elsewhere when approved by the director.

(L. 1990 S.B. 751)

Effective 7-1-91

Benefits to be paid, when--reduction of benefits, when.

287.149. 1. Temporary total disability or temporary partial disability benefits shall be paid throughout the rehabilitative process.

2. The permanency of the employee's disability under sections 287.170 to 287.200 shall not be established, determined or adjudicated while the employee is participating in rehabilitation services.

3. Refusal of the employee to accept rehabilitation services or submit to a vocational rehabilitation assessment as deemed necessary by the employer shall result in a fifty percent reduction in all disability payments to an employee, including temporary partial disability benefits paid pursuant to section 287.180, for each week of the period of refusal.

(L. 1990 S.B. 751)

Effective 7-1-91

Subrogation to rights of employee or dependents against third person,effect of recovery--construction design professional, immunityfrom liability, when, exception--waiver of subrogation rights oncertain contracts void, employer's lien on subrogation recovery,when--third party liability, subrogation, effect on.

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

2. When a third person is liable for the death of an employee and compensation is paid or payable under this chapter, and recovery is had by a dependent under this chapter either by judgment or settlement for the wrongful death of the employee, the employer shall have a subrogation lien on any recovery and shall receive or have credit for sums paid or payable under this chapter to any of the dependents of the deceased employee to the extent of the settlement or recovery by such dependents for the wrongful death. Recovery by the employer

and credit for future installments shall be computed using the provisions of subsection 3 of this section relating to comparative fault of the employee.

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

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

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

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

5. No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for

safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

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

7. Notwithstanding any other provision of this section, when a third person or party is liable to the employee, to the dependents of an employee, or to any person eligible to sue for the employee's* wrongful death as provided is section 537.080 in a case where the employee suffers or suffered from an occupational disease due to toxic exposure and the employee, dependents, or persons eligible to sue for wrongful death are compensated under this chapter, in no case shall the employer then be subrogated to the rights of an employee, dependents, or persons eligible to sue for wrongful death against such third person or party when the occupational disease due to toxic exposure arose from the employee's work for employer.

(RSMo 1939 § 3699, A.L. 1955 p. 597, A.L. 1957 p. 560, A.L. 1990 S.B. 751, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130, A.L. 2013 S.B. 1)

Prior revision: 1929 § 3309

Effective 1-01-14

*Word "employer's" appears in original rolls, a typographical error.

Waiting period--compensation, how paid--interest, how computed--notcredit to employer for wages or benefits paid, exception.

287.160. 1. Except as provided in section 287.140, no compensation shall be payable for the first three days or less of disability during which the employer is open for the purpose of operating its business or enterprise unless the disability shall last longer than fourteen days. If

the disability lasts longer than fourteen days, payment for the first three days shall be made retroactively to the claimant.

2. Compensation shall be payable as the wages were paid prior to the injury, but in any event at least once every two weeks. If an injured employee claims benefits pursuant to this section, an employer may, if the employee agrees in writing, pay directly to the employee any benefits due pursuant to section 287.170. The employer shall continue such payments until the insurer starts making the payments or the claim is contested by any party. Where the claim is found to be compensable the employer's workers' compensation insurer shall indemnify the employer for any payments made pursuant to this subsection. If the employee's claim is found to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer, or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

(1) Lump sum payment;

(2) Refund of the compensation equivalent of any accumulated sick or disability leave;

(3) Payroll deduction; or

(4) Secured installment plan. If the employee is no longer employed by such employer, the employer may garnish the employee's wages or execute upon any property, except real estate, of the employee. Nothing in this subsection shall be construed to require any employer to make payments directly to the employee.

3. Where weekly benefit payments that are not being contested by the employer or his insurer are due, and if such weekly benefit payments are made more than thirty days after becoming due, the weekly benefit payments that are late shall be increased by ten percent simple interest per annum. Provided, however, that if such claim for weekly compensation is contested by the employee, and the employer or his insurer have not paid the disputed weekly benefit payments or lump sum within thirty days of when the administrative law judge's order becomes final, or from the date of a decision by the labor and industrial relations commission, or from the date of the last judicial review, whichever is later, interest on such disputed weekly benefit payments or lump sum so ordered, shall be increased by ten percent simple interest per annum beginning thirty days from the date of such order. Provided, however, that if such claims for weekly compensation are contested solely by the employer or insurer, no interest shall be payable until after thirty days after the award of the administrative law judge. The state of

Missouri or any of its political subdivisions, as an employer, is liable for any such interest assessed against it for failure to promptly pay on any award issued against it under this chapter.

4. Compensation shall be payable in accordance with the rules given in sections 287.170, 287.180, 287.190, 287.200,287.240, and 287.250.

5. The employer shall not be entitled to credit for wages or such pay benefits paid to the employee or his dependents on account of the injury or death except as provided in section 287.270.

(RSMo 1939 § 3702, A.L. 1947 V. II p. 446, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 p. 414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1984 H.B. 1106, A.L. 1990 S.B. 751, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3312

Temporary total disability, amount to be paid--method ofpayment--disqualification, when--post injury misconduct defined.

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

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

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

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

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

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

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

3. An employee is disqualified from receiving temporary total disability during any period of time in which the claimant applies and receives unemployment compensation.

4. If the employee is terminated from post-injury employment based upon the employee's post-injury misconduct, neither temporary total disability nor temporary partial disability benefits under this section or section* 287.180 are payable. As used in this section, the phrase "post-injury misconduct" shall not include absence from the workplace due to an injury unless the employee is capable of working with restrictions, as certified by a physician.

(RSMo 1939 § 3704, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 p. 414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1987 H.B. 564, A.L. 1990 S.B. 751, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3313

*Word "section" does not appear in original rolls.

Temporary partial disability, amount to be paid--method of payment.

287.180. 1. For temporary partial disability, compensation shall be paid during such disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent of the difference between the average earnings prior to the accident and the amount which the employee, in the exercise of reasonable diligence, will be able to earn during the disability, to be determined in view of the nature and extent of the injury and the ability of the employee to compete in an open labor market. The amount of such compensation shall be computed as follows:

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

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

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

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

2. Temporary partial disability payments shall be made to the claimant by check, or other negotiable instrument approved by the director which will not result in delay in payment.

(RSMo 1939 § 3704, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 p. 414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1990 S.B. 751)

Prior revision: 1929 § 3314

*Word "are" does not appear in original rolls.

Permanent partial disability, amount to be paid--permanent partialdisability defined--permanent total and partial total disabilityrequire certification by physician on compensability--awardreduced when.

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

Weeks (1) Loss of arm at shoulder 232 (2) Loss of arm between shoulder and elbow 222 (3) Loss of arm at elbow joint 210 (4) Loss of arm between elbow and wrist 200 (5) Loss of hand at the wrist joint 175 (6) Loss of thumb at proximal joint 60 (7) Loss of thumb at distal joint 45 (8) Loss of index finger at proximal joint 45 (9) Loss of index finger at second joint 35 (10) Loss of index finger at distal joint 30 (11) Loss of either the middle or ring finger at the proximal joint 35 (12) Loss of either the middle or ring finger at second joint 30 (13) Loss of either the middle or ring finger at the distal joint 26 (14) Loss of little finger at proximal joint 22 (15) Loss of little finger at second joint 20 (16) Loss of little finger at distal joint 16 (17) Loss of one leg at the hip joint or so

near thereto as to preclude the use of artificial limb 207 (18) Loss of one leg at or above the knee,

where the stump remains sufficient to permit the use of artificial limb 160 (19) Loss of one leg at or above ankle and below knee joint 155 (20) Loss of one foot in tarsus 150 (21) Loss of one foot in metatarsus 110 (22) Loss of great toe of one foot at proximal joint 40 (23) Loss of great toe of one foot at distal joint 22 (24) Loss of any other toe at proximal joint 14 (25) Loss of any other toe at second joint 10 (26) Loss of any other toe at distal joint 8 (27) Complete

deafness of both ears 180 (28) Complete deafness of one ear, the other being normal 49 (29) Complete loss of the sight of one eye 140

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

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

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

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

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

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

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly

compensation paid under this subdivision shall not exceed an amount equal to fifty percent of the state average weekly wage;

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

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

6. (1) "Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating established by medical finding, certified by a physician, and approved by an administrative law judge or legal advisor, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959.

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

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

(RSMo 1939 § 3705, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1955 p. 588, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 pp. 397, 414, A.L. 1967 p.

384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1975 H.B. 196, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1990 S.B. 751, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3315

Claims for hernia, proof required.

287.195. In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the division or the commission:

(1) That there was an accident or unusual strain resulting in hernia;

(2) That the hernia did not exist prior to the accident or unusual strain resulting in the injury for which compensation is claimed.

(RSMo 1939 § 3705, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1955 p. 588, A.L. 1957 p. 560 § 287.191, A.L. 1965 p. 397, A.L. 1980 H.B. 1396)

Occupational deafness--tests, claims, awards, liability of employer,effect of hearing aid.

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

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

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

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

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

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

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

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

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

(L. 1959 S.B. 167 § 287.202, A.L. 1967 p. 390, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Permanent total disability, amount to be paid--suspension of payments,when--toxic exposure, treatment of claims.

287.200. 1. Compensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom compensation may be payable as provided in subsection 1 of section 287.020. The amount of such compensation shall be computed as follows:

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

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

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

(4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly

earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

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

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

3. All claims for permanent total disability shall be determined in accordance with the facts. When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his regular work or its equivalent. The employer and the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability. In any case where the life payment is suspended under this subsection, the commission may at reasonable times review the case and either the employee or the employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

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

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

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

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

**(a) For employers that have elected to accept mesothelioma liability under this subsection, an additional amount of three hundred percent of the state's average weekly wage for two hundred twelve weeks shall be paid by the employer or group of employers such employer is a member of. Employers that elect to accept mesothelioma liability under this subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by becoming a member of a group insurance pool. A group of employers may enter into an agreement to pool their liabilities under this subsection. If such group is joined, individual members shall not be required to qualify as individual self-insurers. Such group shall comply with section 287.223. In order for an employer to make such an election, the employer shall provide the department with notice of such an election in a manner established by the department. The provisions of this paragraph shall expire on December 31, 2038; or

**(b) For employers who reject mesothelioma under this subsection, then the exclusive remedy provisions under section287.120 shall not apply to such liability. The provisions of this paragraph shall expire on December 31, 2038; and

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

(5) Notwithstanding any other provision of this chapter to the contrary, should the employee die before the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection are paid, the additional benefits are payable to the employee's spouse or children, natural or adopted, legitimate or illegitimate, in addition to benefits provided under section287.240. If there is no surviving spouse or children and the employee has received less than the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection the remainder of such additional benefits shall be paid as a single payment to the estate of the employee;

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

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

benefits than such employee would receive having only obtained benefits for mesothelioma under this section.

(RSMo 1939 § 3706, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 pp. 397, 414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1990 S.B. 751, A.L. 2008 H.B. 1883, A.L. 2013 S.B. 1)

Prior revision: 1929 § 3316

Effective 1-01-14

*Word "subdivision" appears in original rolls.

**Paragraphs (a) and (b) of subdivision (3) of subsection 4 expire 12-31-38

Termination of compensation by employer, employee right tohearing--assessment of costs.

287.203. Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

(L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130)

Physical examination of employee--exchange of medicalrecords--admissibility of physician's, coroner's records--autopsymay be ordered.

287.210. 1. After an employee has received an injury he shall from time to time thereafter during disability submit to reasonable medical examination at the request of the employer, the employer's insurer, the commission, the division, an administrative law judge, or the attorney general on behalf of the second injury fund if the employer has not obtained a medical examination report, the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee

may have his own physician present, and if the employee refuses to submit to the examination, or in any way obstructs it, his right to compensation shall be forfeited during such period unless in the opinion of the commission the circumstances justify the refusal or obstruction.

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

3. The testimony of any physician who treated or examined the injured employee shall be admissible in evidence in any proceedings for compensation under this chapter, but only if the medical report of the physician has been made available to all parties as in this section provided. Immediately upon receipt of notice from the division or the commission setting a date for hearing of a case in which the nature and extent of an employee's disability is to be determined, the parties or their attorneys shall arrange, without charge or costs, each to the other, for an exchange of all medical reports, including those made both by treating and examining physician or physicians, to the end that the parties may be commonly informed of all medical findings and opinions. The exchange of medical reports shall be made at least seven days before the date set for the hearing and failure of any party to comply may be grounds for asking for and receiving a continuance, upon proper showing by the party to whom the medical reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical report of the treating or examining physician at least seven days before such physician's deposition or personal testimony at the hearing, as in this section provided, upon the objection of the party who was not provided with the medical report, the physician shall not be permitted to testify at that hearing or by medical deposition.

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

5. As used in this chapter the terms "physician's report" and "medical report" mean the report of any physician made on any printed form authorized by the division or the commission or any complete medical report. As used in this chapter the term "complete medical report" means the report of a physician giving the physician's qualifications and the patient's history,

complaints, details of the findings of any and all laboratory, X-ray and all other technical examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage of permanent partial disability, if any. An element or elements of a complete medical report may be met by the physician's records.

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

7. The testimony of a treating or examining physician may be submitted in evidence on the issues in controversy by a complete medical report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit a complete medical report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the physician by deposition. The notice shall include a copy of the report and all the clinical and treatment records of the physician including copies of all records and reports received by the physician from other health care providers. The party offering the report must make the physician available for cross-examination testimony by deposition not later than seven days before the matter is set for hearing, and each cross-examiner shall compensate the physician for the portion of testimony obtained in an amount not to exceed a rate of reasonable compensation taking into consideration the specialty practiced by the physician. Cross-examination testimony shall not bind the cross-examining party. Any testimony obtained by the offering party shall be at that party's expense on a proportional basis, including the deposition fee of the physician. Upon request of any party, the party offering a complete medical report in evidence must also make available copies of X rays or other diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report by providing written objections to the offering party stating the grounds for the dispute, and at the request of any party, the administrative law judge shall rule upon such objections upon pretrial hearing whether the report meets the requirements of a complete medical report and upon the admissibility of the report or portions thereof. If no objections are filed the report is admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the parties from agreeing to admit medical reports or records by consent.

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

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

(RSMo 1939 § 3738, A.L. 1957 p. 557, A.L. 1965 p. 397. A.L. 1980 H.B. 1396, A.L. 1990 S.B. 751, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2013 S.B. 1)

Prior revision: 1929 § 3348

Effective 1-01-14

Injured employee to be furnished copy of his statement, otherwiseinadmissible as evidence--statement, what is not to be included.

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

(L. 1959 S.B. 167, A.L. 1965 p. 397, A.L. 1973 H.B. 215, A.L. 2005 S.B. 1 & 130)

Compensation and payment of compensation for disability--second injuryfund created, services covered, actuarial studiesrequired--failure of employer to insure, penalty--records open topublic, when--concurrent employers, effect--priority of paymentof liabilities of fund.

287.220. 1. There is hereby created in the state treasury a special fund to be known as the "Second Injury Fund" created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and

any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

2. All cases of permanent disability where there has been previous disability due to injuries occurring prior to January 1, 2014, shall be compensated as provided in this subsection. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable

only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of the second injury fund.

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

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

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

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

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

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

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

b. Such employee thereafter sustains a subsequent compensable work-related injury that, when combined with the preexisting disability, as set forth in items (i), (ii), (iii), or (iv) of

subparagraph a. of this paragraph, results in a permanent total disability as defined under this chapter; or

(b) An employee is employed in a sheltered workshop as established in sections 205.968 to 205.972 or sections 178.900 to178.960 and such employee thereafter sustains a compensable work-related injury that, when combined with the preexisting disability, results in a permanent total disability as defined under this chapter.

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

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

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

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

(3) For all claims filed against the second injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where an actual or potential conflict of interest exists, to provide legal services as may be required in all claims made for recovery against the fund. Any legal expenses incurred by the attorney general's office in the handling of such claims, including, but not limited to, medical examination fees incurred under sections 287.210 and the expenses provided for under section 287.140, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be contingent upon annual appropriations made by the general assembly, from the fund, to the attorney general's office for this specific purpose.

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

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

7. If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses incurred relating to claims for injuries occurring prior to January 1, 2014, to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer consistent with subsection 3 of section 287.140, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses incurred relating to a death occurring prior to January 1, 2014, in the manner required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same defenses to such claims as would the uninsured employer. Any funds received by the employee or the employee's dependents, through civil or other action, must go towards reimbursement of the second injury fund, for all payments made to the employee, the employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri shall bring suit in the circuit court of the county in which the accident occurred against any employer not covered by this chapter as required in section 287.280.

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

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

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

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

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

13. Notwithstanding the requirements of section 287.470, the life payments to an injured employee made from the fund shall be suspended when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. The division shall promulgate rules setting forth a reasonable standard means test to determine if such employment warrants the suspension of benefits.

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

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

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

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

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

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

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

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

(RSMo 1939 § 3707, A.L. 1943 p. 1068, A.L. 1945 p. 1996, A.L. 1951 p. 617, A.L. 1953 p. 524, A.L. 1955 p. 590, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1982 H.B. 1605, A.L. 1987 H.B. 564, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2013 S.B. 1)

Prior revision: 1929 § 3317

Effective 1-01-14

(2012) Language requiring only a "compensable injury" to trigger Second Injury Fund liability includes both compensable injuries by accident and compensable injuries by occupational disease. Treasurer of State of Missouri v. Stiers, 388 S.W.3d 217 (Mo.App.W.D.).

Missouri mesothelioma risk management fundcreated--definitions--issuance of payments, when--board oftrustees, appointment, meetings, duties.

287.223. 1. There is hereby created the "Missouri Mesothelioma Risk Management Fund", which shall be a body corporate and politic. The board of trustees of this fund shall have the powers and duties specified in this section and such other powers as may be necessary or proper to enable it, its officers, employees and agents to carry out fully and effectively all the purposes of this section.

2. Unless otherwise clearly indicated by the context, the following words and terms as used in this section mean:

(1) "Board", the board of trustees of the Missouri mesothelioma risk management fund;

(2) "Fund", the Missouri mesothelioma risk management fund established by subsection 1 of this section.

3. Any employer may participate in the Missouri mesothelioma risk management fund and use funds collected under this section to pay mesothelioma awards made against an employer member of the fund.

4. Employers who participate in the fund shall make annual contributions to the fund in the amount determined by the board in accordance with this section relating to rates established by insurers. Participation in the fund has the same effect as purchase of insurance by such employer, as otherwise provided by law, and shall have the same effect as a self-insurance plan. Moneys in the fund shall be available for:

(1) The payment and settlement of all claims for which coverage has been obtained by any employer participating in the fund in accordance with coverages offered by the board relating to mesothelioma awards pursuant to paragraph (a) of subdivision (3) of subsection 4 of section 287.200;

(2) Attorney's fees and expenses incurred in the administration and representation of the fund.

5. No amount in excess of the amount specified by paragraph (a) of subdivision (3) of subsection 4 of section 287.200 shall be paid from the fund for the payment of claims arising out of any award.

6. The board of trustees of the fund shall issue payment of benefits in accordance with coverages offered by the board. For any year in which any employer does not make a yearly contribution to the fund, the board of trustees of the fund shall not be responsible, in any way, for payment of any claim arising from an occurrence in that year. Any employer which discontinues its participation in the fund may not resume participation in the fund for five calendar years after discontinuing participation. Should an employer fail to make a yearly contribution, such employer shall be liable pursuant to paragraph (b) of subdivision (3) of subsection 4 of section 287.200 if a claim is made in such year. If ongoing benefits are due by the fund for an employer who fails* to make a yearly contribution, such employer shall be liable to the fund for the ongoing benefits.

7. All staff for the fund shall be provided by the department of labor except as otherwise specifically determined by the board. The fund shall reimburse the department of labor for all costs of providing staff required by this subsection. Such reimbursement shall be made on an annual basis, pursuant to contract negotiated between the fund and the department of labor. The fund is a body corporate and politic, and the state of Missouri shall not be liable in any way with respect to claims made against the fund or against member employers covered by the fund, nor with respect to any expense of operation of the fund. Money in the fund is not state money nor is it money collected or received by the state.

8. Each participating employer shall notify the board of trustees of the fund within seven working days of the time notice is received that a claim for benefits has been made against the employer. The employer shall supply information to the board of trustees of the fund concerning any claim upon request. It shall also notify the board of trustees of the fund upon the closing of any claim.

9. The board may contract with independent insurance agents, authorizing such agents to accept contributions to the fund from employers on behalf of the board upon such terms and conditions as the board deems necessary, and may provide a reasonable method of compensating such agents. Such compensation shall not be additional to the contribution to the fund.

10. There is hereby established a "Board of Trustees of the Missouri Mesothelioma Risk Management Fund", which shall consist of the director of the department of labor, and four members, appointed by the governor with the advice and consent of the senate, who are officers or employees of those employers participating in the fund. No more than two members appointed by the governor shall be of the same political party. The members appointed by the governor shall serve four-year terms, except that the original appointees shall be appointed for the following terms: one for one year, one for two years, one for three years, and one for four years. Any vacancies occurring on the board shall be filled in the same manner. In appointing the initial board of trustees the governor may anticipate which public entities will participate in the fund, and the appointees may serve the terms designated herein, unless they sooner resign or are removed in accordance with law.

11. No trustee shall be liable personally in any way with respect to claims made against the fund or against member employers covered by the fund.

12. The board shall elect one of their members as chairman. He or she shall preside over meetings of the board and perform such other duties as shall be required by action of the board.

13. The chairman shall appoint another board member as vice chairman, and the vice chairman shall perform the duties of the chairman in the absence of the latter or upon his inability or refusal to act.

14. The board shall appoint a secretary who shall have charge of the offices and records of the fund, subject to the direction of the board.

15. The board shall meet in Jefferson City, Missouri, upon the written call of the chairman or by the agreement of any three members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent.

16. Three trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on a majority vote of the trustees present.

17. The trustees shall serve without compensation but shall receive from the fund their actual and necessary expenses incurred in the performance of their duties for the board.

18. Duties performed for the fund by any member of the board who is an employee of a member employer shall be considered duties in connection with the regular employment of such employer, and such person shall suffer no loss in regular compensation by reason of the performance of such duties.

19. The board shall keep a complete record of all its proceedings.

20. A statement covering the operations of the fund for the year, including income and disbursements, and of the financial condition of the fund at the end of the year, showing the valuation and appraisal of its assets and liabilities, as of July first, shall each year be delivered to the governor and be made readily available to public entities.

21. The general administration of, and responsibility for, the proper operation of the fund, including all decisions relating to payments from the fund, are hereby vested in the board of trustees.

22. The board shall determine and prescribe all rules, regulations, coverages to be offered, forms and rates to carry out the purposes of this section.

23. The board shall have exclusive jurisdiction and control over the funds and property of the fund.

24. No trustee or staff member of the fund shall receive any gain or profit from any moneys or transactions of the fund.

25. Any trustee or staff member accepting any gratuity or compensation for the purpose of influencing his or her action with respect to the investment of the funds of the system or in the operations of the fund shall forfeit his or her office.

26. The board shall have the authority to use moneys from the fund to purchase one or more policies of insurance or reinsurance to cover the liabilities of participating employers members which are covered by the fund. If such insurance can be procured, the board shall have the authority to procure insurance covering participating member employers per occurrence for liabilities covered by the fund. The costs of such insurance shall be considered in determining the contribution of each employer member.

27. The board shall have the authority to use moneys from the fund to assist participating members in assessing and reducing the risk of liabilities which may be covered by the fund.

28. The board shall set up and maintain a Missouri mesothelioma risk management fund account in which shall be placed all contributions, premiums, and income from all sources. All property, money, funds, investments, and rights which shall belong to, or be available for expenditure or use by, the fund shall be dedicated to and held in trust for the purposes set out in this section and no other. The board shall have power, in the name of and on behalf of the fund, to purchase, acquire, hold, invest, lend, lease, sell, assign, transfer, and dispose of all property, rights, and securities, and enter into written contracts, all as may be necessary or proper to carry out the purposes of this section.

29. All moneys received by or belonging to the fund shall be paid to the secretary and deposited by him or her to the credit of the fund in one or more banks or trust companies. No such money shall be deposited in or be retained by any bank and trust company which does not have on deposit with the board at the time the kind and value of collateral required by section 30.270 for depositories of the state treasurer. The secretary shall be responsible for all funds, securities, and property belonging to the fund, and shall give such corporate surety bond for the faithful handling of the same as the board shall require.

30. So far as practicable, the funds and property of the fund shall be kept safely invested so as to earn a reasonable return. The board may invest the funds of the fund as permitted by the laws of Missouri relating to the investment of the capital, reserve, and surplus funds of casualty insurance companies organized under the laws of Missouri.

31. If contributions to the fund do not produce sufficient funds to pay any claims which may be due, the board shall assess and each member, including any member who has withdrawn but was a member in the year in which the assessment is required, shall pay such additional amounts which are each member's proportionate share of total claims allowed and

due. The provisions of this subsection shall apply retroactively to the creation of the Missouri mesothelioma risk management fund.

32. The board, in order to carry out the purposes for which the fund is established, may select and employ, or contract with, persons experienced in insurance underwriting, accounting, the servicing of claims, and ratemaking, who shall serve at the board's pleasure, as technical advisors in establishing the annual contribution, or may call upon the director of the department of insurance, financial institutions and professional registration for such services.

33. Nothing in this section shall be construed to broaden or restrict the liability of the member employers participating in the fund beyond the provisions of this section**, nor to abolish or waive any defense at law which might otherwise be available to any employer member.

34. If, at the end of any fiscal year, the fund has a balance exceeding projected needs, and adequate reserves, the board may in its discretion refund on a pro rata basis to all participating employer members an amount based on the contributions of the public entity for the immediately preceding year.

(L. 2013 S.B. 1)

Effective 1-01-14

*Word "fail" appears in original rolls.

**Word "sections" appears in original rolls.

Payment of compensation at death of employee--exceptions--abrogationof case law.

287.230. 1. The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability.

2. Where an employee is entitled to compensation under this chapter, exclusive of compensation as provided for in section287.200, for an injury received and death ensues for any cause not resulting from the injury for which the employee was entitled to compensation,

payments of the unpaid unaccrued compensation under section 287.190 and no other compensation for the injury shall be paid to the surviving dependents at the time of death.

3. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate the holding in Schoemehl v. Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. 2007), and all cases citing, interpreting, applying, or following this case.

(RSMo 1939 § 3708, A.L. 1965 p. 397, A.L. 2008 H.B. 1883)

Prior revision: 1929 § 3318

Effective 6-26-08

(2008) Interpretation of law decided while other cases are pending applies prospectively to all actions pending on and prospective to date on which opinion was issued. Strait v. Treasurer of Missouri, 257 S.W.3d 600 (Mo.banc).

Death benefits and burial expenses, amount, to whom paid and whenpaid--dependent defined--death benefits, how distributed--record ofdependents, employer to keep--dependents to report to division,procedure.

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

(1) In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding five thousand dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he has furnished the same by authority of the widow or widower, the nearest relative of the deceased employee in the county of his death, his personal representative, or the employer, who shall have the right to give the authority in the order named. All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the division or the commission and shall be limited to such as are fair and reasonable for similar service to persons of a like standard of living. The division or the commission shall also have jurisdiction to hear and determine all disputes as to the charges. If the deceased employee leaves no dependents, the death benefit in this subdivision provided shall be the limit of the liability of the employer under this chapter on account of the death, except as herein provided for burial expenses and except as provided in section 287.140; provided that in all cases when the employer admits or does not deny liability for the burial expense, it shall be paid within thirty days after written notice, that the service has been rendered, has been delivered to the

employer. The notice may be sent by registered mail, return receipt requested, or may be made by personal delivery;

(2) The employer shall also pay to the total dependents of the employee a death benefit based on the employee's average weekly earnings during the year immediately preceding the injury that results in the death of the employee, as provided in section287.250. The amount of compensation for death, which shall be paid in installments in the same manner that compensation is required to be paid under this chapter, shall be computed as follows:

(a) If the injury which caused the death occurred on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings during the year immediately preceding the injury; provided that the weekly compensation paid under this paragraph shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury. If there is a total dependent, no death benefits shall be payable to partial dependents or any other persons except as provided in subdivision (1) of this section;

(b) If the injury which caused the death occurred on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings during the year immediately preceding the injury; provided that the weekly compensation paid under this paragraph shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury. If there is a total dependent, no death benefit shall be payable to partial dependents or any other persons except as provided in subdivision (1) of this section;

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

(d) If the injury which caused the death occurred on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly

compensation paid under this paragraph shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

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

(3) If there are partial dependents, and no total dependents, a part of the death benefit herein provided in the case of total dependents, determined by the proportion of his contributions to all partial dependents by the employee at the time of the injury, shall be paid by the employer to each of the dependents proportionately;

(4) The word "dependent" as used in this chapter shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee, and any death benefit shall be payable to them to the exclusion of other total dependents:

(a) A wife upon a husband with whom she lives or who is legally liable for her support, and a husband upon a wife with whom he lives or who is legally liable for his support; provided that on the death or remarriage of a widow or widower, the death benefit shall cease unless there be other total dependents entitled to any death benefits under this chapter. In the event of remarriage, a lump sum payment equal in amount to the benefits due for a period of two years shall be paid to the widow or widower. Thereupon the periodic death benefits shall cease unless there are other total dependents entitled to any death benefit under this chapter, in which event the periodic benefits to which such widow or widower would have been entitled had he or she not died or remarried shall be divided among such other total dependents and paid to them during their period of entitlement under this chapter;

(b) A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent. In case there is a wife or a husband mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and a child or more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on the dependency. In all other cases questions of total or partial dependency shall be determined in accordance with the facts at the time of the injury, and in such other

cases if there is more than one person wholly dependent the death benefit shall be divided equally among them. The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his active duty in the Armed Forces, unless there are other total dependents entitled to the death benefit under this chapter;

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

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

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

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

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

(RSMo 1939 § 3709, A.L. 1943 p. 1073, A.L. 1943 p. 1076, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 pp. 397,

414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1975 H.B. 941, A.L. 1976 S.B. 708, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 S.B. 44 & 45 merged with H.B. 243 & 260, A.L. 1990 S.B. 751)

Prior revision: 1929 § 3319

Death benefits, inconsistent with section 287.240, when.

287.241. The dependent and the employer may, by agreement, enter into a structured settlement which provides for different weekly benefits than provided in section 287.240. Any such settlement must be secured by indemnity insurance issued by a company approved by the Missouri department of insurance, financial institutions and professional registration.

(L. 1980 H.B. 1396)

Line of duty compensation--definitions--claim procedure--nosubrogation rights for employers or insurers--grievanceprocedures--sunset date--fund created, use of moneys--rulemakingauthority.

287.243. 1. This section shall be known and may be cited as the "Line of Duty Compensation Act".

2. As used in this section, unless otherwise provided, the following words shall mean:

(1) "Air ambulance pilot", a person certified as an air ambulance pilot in accordance with sections 190.001 to 190.245 and corresponding regulations applicable to air ambulances adopted by the department of health and senior services, division of regulation and licensure, 19 CSR 30-40.005, et seq.;

(2) "Air ambulance registered professional nurse", a person licensed as a registered professional nurse in accordance with sections 335.011 to 335.096 and corresponding regulations adopted by the state board of nursing, 20 CSR 2200-4, et seq., who provides registered professional nursing services as a flight nurse in conjunction with an air ambulance program that is certified in accordance with sections 190.001 to 190.245 and the corresponding regulations applicable to such programs;

(3) "Emergency medical technician", a person licensed in emergency medical care in accordance with standards prescribed by sections 190.001 to 190.245 and by rules adopted by the department of health and senior services under sections 190.001 to190.245;

(4) "Firefighter", any person, including a volunteer firefighter, employed by the state or a local governmental entity as an employer defined under subsection 1 of section 287.030, or otherwise serving as a member or officer of a fire department either for the purpose of the prevention or control of fire or the underwater recovery of drowning victims;

(5) "Killed in the line of duty", when any person defined in this section loses his or her life when:

(a) Death is caused by an accident or the willful act of violence of another;

(b) The law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter is in the active performance of his or her duties in his or her respective profession and there is a relationship between the accident or commission of the act of violence and the performance of the duty, even if the individual is off duty; the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter is traveling to or from employment; or the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter is taking any meal break or other break which takes place while that individual is on duty;

(c) Death is the natural and probable consequence of the injury; and

(d) Death occurs within three hundred weeks from the date the injury was received.

The term excludes death resulting from the willful misconduct or intoxication of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter. The division of workers' compensation shall have the burden of proving such willful misconduct or intoxication;

(6) "Law enforcement officer", any person employed by the state or a local governmental entity as a police officer, peace officer certified under chapter 590, or serving as an auxiliary police officer or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life;

(7) "Local governmental entity", includes counties, municipalities, townships, board or other political subdivision, cities under special charter, or under the commission form of government, fire protection districts, ambulance districts, and municipal corporations;

(8) "State", the state of Missouri and its departments, divisions, boards, bureaus, commissions, authorities, and colleges and universities;

(9) "Volunteer firefighter", a person having principal employment other than as a firefighter, but who is carried on the rolls of a regularly constituted fire department either for the purpose of the prevention or control of fire or the underwater recovery of drowning victims, the members of which are under the jurisdiction of the corporate authorities of a city, village, incorporated town, or fire protection district. Volunteer firefighter shall not mean an individual who volunteers assistance without being regularly enrolled as a firefighter.

3. (1) A claim for compensation under this section shall be filed by the estate of the deceased with the division of workers' compensation not later than one year from the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter. If a claim is made within one year of the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter killed in the line of duty, compensation shall be paid, if the division finds that the claimant is entitled to compensation under this section.

(2) The amount of compensation paid to the claimant shall be twenty-five thousand dollars, subject to appropriation, for death occurring on or after June 19, 2009.

4. Notwithstanding subsection 3 of this section, no compensation is payable under this section unless a claim is filed within the time specified under this section setting forth:

(1) The name, address, and title or designation of the position in which the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter was serving at the time of his or her death;

(2) The name and address of the claimant;

(3) A full, factual account of the circumstances resulting in or the course of events causing the death at issue; and

(4) Such other information that is reasonably required by the division.

When a claim is filed, the division of workers' compensation shall make an investigation for substantiation of matters set forth in the application.

5. The compensation provided for under this section is in addition to, and not exclusive of, any pension rights, death benefits, or other compensation the claimant may otherwise be entitled to by law.

6. Neither employers nor workers' compensation insurers shall have subrogation rights against any compensation awarded for claims under this section. Such compensation shall not be assignable, shall be exempt from attachment, garnishment, and execution, and shall not be subject to setoff or counterclaim, or be in any way liable for any debt, except that the division or commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if the services are found to be necessary. Such fees are subject to regulation as set forth in section 287.260.

7. Any person seeking compensation under this section who is aggrieved by the decision of the division of workers' compensation regarding his or her compensation claim, may make application for a hearing as provided in section 287.450. The procedures applicable to the processing of such hearings and determinations shall be those established by this chapter. Decisions of the administrative law judge under this section shall be binding, subject to review by either party under the provisions of section287.480.

8. Pursuant to section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after June 19, 2019, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

9. The provisions of this section, unless specified, shall not be subject to other provisions of this chapter.

10. There is hereby created in the state treasury the "Line of Duty Compensation Fund", which shall consist of moneys appropriated to the fund and any voluntary contributions, gifts, or bequests to the fund. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with sections 30.170 and 30.180. Upon appropriation, money in the fund shall be used solely for paying claims under this section.

Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

11. The division shall promulgate rules to administer this section, including but not limited to the appointment of claims to multiple claimants, record retention, and procedures for information requests. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after June 19, 2009, shall be invalid and void.

(L. 2009 H.B. 580, A.L. 2014 S.B. 852)

Sunset date 6-19-25

Termination date 9-01-26

Compensation, computation of--average weekly wage, division orcommission may determine, when--additional compensation forpersons under twenty-one, when--multiple employers, computationof coverage--weekly wage--compromise settlement.

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

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

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

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

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually

employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

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

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

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

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

money paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of his employment shall not be included in wages.

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

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

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

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

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

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

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

(RSMo 1939 § 3710, A.L. 1965 p. 397, A.L. 1981 H.B. 324, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3320

Cafeteria plan payroll deductions, not to reduce computation ofemployee compensation.

287.252. Where an employer has established a cafeteria plan for the employees of the employer in accordance with Section 125 of Title 26 United States Code, no payroll deduction or other reduction in salary of any employee made for the purpose of participating in such cafeteria plan shall have the effect of reducing the compensation amount used in calculating the employee's compensation or wages for the purpose of any workers' compensation claim governed by this chapter.

(L. 1993 H.B. 609 § 1)

Monetary bonus, effect on benefits.

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

(L. 2005 S.B. 1 & 130)

Compensation to have priority--not assignable--exceptions.

287.260. 1. The compensation payable under this chapter, whether or not it has been awarded or is due, shall not be assignable, shall be exempt from attachment, garnishment, and execution, shall not be subject to setoff or counterclaim, or be in any way liable for any debt and in case of the insolvency of an employer or his insurer, or the levy of an attachment or an execution against an employer or insurer shall be entitled to the same preference and priority as claims for wages, without limit as to time or amount, except that if written notice is given to the division or the commission of the nature and extent thereof, the division or the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if the services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments. All attorney's fees for services in connection with this chapter shall be subject to regulation by the division or the commission and shall be limited to such charges as are fair and reasonable and the division or the commission shall have jurisdiction to hear and determine all disputes concerning the same.

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

(RSMo 1939 § 3711, A.L. 1965 p. 397, A.L. 1986 H.B. 1479)

Prior revision: 1929 § 3321

Payments made to public assistance recipients to be a debt due state,recovery by state--attorney's fees--assignment ofrights--apportionment by judge, when.

287.266. 1. As used in this section, the following terms mean:

(1) "Provider", any individual, corporation, public or private entity that has entered into an agreement with the state to provide any service set out in section 208.152 and subsequent amendments;

(2) "Person eligible for public assistance", any individual who is or was eligible for medical assistance under the laws of this state.

2. Payments made to or on behalf of a person eligible for public assistance as the result of any compensable injury, occupational disease or disability as defined by this chapter shall be a debt due the state, and recovery of same shall be a recognized action pursuant to this chapter.

3. The state shall have a lien upon any funds owed by any employer that are or might be due under any insurance agreement or self-insurance authority in effect at the time the medical expense or any portion thereof was paid by the department of social services or its designated division.

4. The state shall have a right of subrogation to any funds owed to or received by the employee or any person, corporation, public agency or private agency acting on his behalf notwithstanding any other provisions of this chapter.

5. The department of social services or its designated division may maintain an appropriate action to recover funds due under this section pursuant to the workers' compensation law or the second injury fund, which includes the exercise of all appeal rights afforded by the laws of this state.

6. The department shall have a right to recover the full amount of its payments when payments are made to a provider under this chapter if the payments were made on behalf of a person eligible for public assistance for an injury, occupational disease, or disability which is compensable under this chapter.

7. This debt due the state shall be subordinate only to the fee rights of the injured employee's attorney pursuant to this chapter, and the state shall not be required to pay any portion of the fees or costs incurred by the employee or the employer.

8. Application for and acceptance of public assistance made to or on behalf of the injured employee shall constitute an assignment of rights to the department of social services for reimbursement of funds expended by the department of social services in the treatment of a compensable injury.

9. The attorney shall notify the department of social services upon representation of each client who was eligible for public assistance as provided by sections 208.151 to 208.159 and section 208.162 prior to, during or subsequent to the date of injury, that the attorney was retained to pursue the client's legal rights related to the compensable injury.

10. The administrative law judge, pursuant to authority granted under section 287.610, shall apportion the debt due the state between the injured worker and the injured worker's employer or their designated representatives when an agreement cannot be reached regarding the respective liability for money expended by the department of social services on behalf of the injured employee, but in no case shall the debt due the state be reduced.

(L. 1987 H.B. 518)

Benefits from other sources no bar to compensation, exception,professional athletes.

287.270. No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; except as provided in subsection 3 of section 287.170, and employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical or hospital benefits paid to or for the employee or his dependents on account of the injury, disability, or death, pursuant to the provisions of the contract.

(RSMo 1939 § 3712, A.L. 1984 H.B. 1106, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3322

Employer's entire liability to be covered, self-insurer or approvedcarrier--exception--group of employers may qualify asself-insurers--uniform experience rating plan--failure to insure,effect--rules--confidential records.

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure their entire liability under the workers' compensation law; and may insure in whole or in part their employer liability, under a policy of insurance or a self-insurance plan, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability to do so. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his dependents may elect after the injury either to bring an action against such employer or group

of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of the employee; or to recover under this chapter with the compensation payments commuted and immediately payable; or, if the employee elects to do so, he or she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 7 of section 287.220. If the employer or group of employers are carrying their own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the employer or group of employers to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but the employer or group of employers may carry their own risk for any excess liability. When a group of employers enter into an agreement to pool their liabilities under this chapter, individual members will not be required to qualify as individual self-insurers.

2. Groups of employers qualified to insure their liability pursuant to chapter 537 or this chapter shall utilize a uniform experience rating plan promulgated by an approved advisory organization. Such groups shall develop experience ratings for their members based on the plan. Nothing in this section shall relieve an employer from remitting, without any charge to the employer, the employer's claims history to an approved advisory organization.

3. For every entity qualified to group self-insure their liability pursuant to this chapter or chapter 537, each entity shall not authorize total discounts for any individual member exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on objective quantitative factors and applied uniformly to all trust members.

4. Any group of employers that have qualified to self-insure their liability pursuant to this chapter shall file with the division premium rates, based on pure premium rate data, adjusted for loss development and loss trending as filed by the advisory organization with the department of insurance, financial institutions and professional registration pursuant to section 287.975, plus any estimated expenses and other factors or based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from the premium rates filed by the twenty insurance companies

providing the greatest volume of workers' compensation insurance coverage in this state. The rate is inadequate if funds equal to the full ultimate cost of anticipated losses and loss adjustment expenses are not produced when the prospective loss costs are applied to anticipated payrolls. The provisions of this subsection shall not apply to those political subdivisions of this state that have qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 on an assessment plan. Any such group may file with the division a composite rate for all coverages provided under that section.

5. Any finding or determination made by the division under this section may be reviewed as provided in sections 287.470 and287.480.

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

7. Any records submitted pursuant to this section, and pursuant to any rule promulgated by the division pursuant to this section, shall be considered confidential and not subject to chapter 610. Any party to a workers' compensation case involving the party that submitted the records shall be able to subpoena the records for use in a workers' compensation case, if the information is otherwise relevant.

(RSMo 1939 § 3713, A.L. 1957 p. 560, A.L. 1965 p. 397, A.L. 1974 S.B. 417, A.L. 1980 H.B. 1396, A.L. 1981 S.B. 382, A.L. 1993 S.B. 251, A.L. 1995 S.B. 3, A.L. 1998 H.B. 1237, et al., A.L. 2013 S.B. 1)

Prior revision: 1929 § 3323

Effective 1-01-14

Employee leasing arrangements, coverage required.

287.282. 1. Notwithstanding the provisions of subsection 1 of section 287.280, every employer who obtains part of his work force from another entity through an employee leasing arrangement, or who employs the services of an entity through an employee leasing arrangement, may be required to cover his liability under the provisions of this chapter, through separate coverages or separate self-insurance on his leased employees and his nonleased employees. The director of the department of insurance, financial institutions and professional registration may, by rule, establish the standards and procedures by which insurance coverage shall be provided to employers using only leased employees, and to employers using both leased and nonleased employees. The director of the division of workers' compensation may, by a rule, establish the standards and procedures for qualification for self-

insurance for employers using only leased employees and for employers using both leased and nonleased employees.

2. Such rules shall include, but not be limited to, the registration of employee leasing arrangements prior to their eligibility for insurance, or self-insurance, the information reporting requirements for both employee leasing arrangements and for employers who use such arrangements, the extent to which a client employer's experience shall determine the premium or bond or other security amount for coverage on leased employees, and the procedures by which such coverage or self-insurance on leased employees shall be issued, endorsed, audited, cancelled and nonrenewed.

3. For purposes of this section, the term "employee leasing arrangement" shall not include temporary help service arrangements which assign their employees to clients for a finite period of time to support or supplement the client's work force in special work situations, such as employee absences, temporary skill shortages and seasonal workloads, and which are not knowingly utilized as a mechanism of depriving one or more insurers of premiums which otherwise are properly payable.

4. When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of workers' compensation through insurance or self-insurance.

(L. 1992 H.B. 975 § 2)

Employee not to pay cost of insurance.

287.290. No part of the cost of such insurance shall be assessed against, collected from or paid by any employee.

(RSMo 1939 § 3714)

Prior revision: 1929 § 3324

Employer's liability primary or secondary--notice and service, whensufficient.

287.300. If the employer is not insured his liability hereunder shall be primary and direct. If he is insured his liability shall be secondary and indirect, and his insurer shall be primarily and directly liable hereunder to the injured employee, his dependents or other persons entitled to rights hereunder. On the request of the division or the commission and at every hearing the

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

(RSMo 1939 § 3715, A.L. 1965 p. 397)

Prior revision: 1929 § 3325

Policies to be approved by department--deductible plans authorized,requirements.

287.310. 1. Every policy of insurance against liability under this chapter shall be in accordance with the provisions of this chapter and shall be in a form approved by the director of the department of insurance, financial institutions and professional registration. Such policy shall contain an agreement that the insurer accepts all of the provisions of this chapter, that the same may be enforced by any person entitled to any rights under this chapter as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this chapter, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this chapter provided, and such covenants shall be enforceable notwithstanding any default of the employer.

2. Any insurer issuing a workers' compensation policy may offer, as a part of the policy or as an optional endorsement to the policy, a deductible plan or plans to allow the insured employer to self-insure for the deductible amount, subject to the approval of the director of the department of insurance, financial institutions and professional registration. No deductible plan shall be approved which permits, directly or indirectly, any part of the deductible to be charged to or passed on to an employee of the insured employer.

3. Any deductible plan authorized under this section may provide for the agreement between the insurer and the insured employer regarding the conditions under which the employer shall be responsible for the payment of any deductible amount to the person or

health care provider entitled to such payment pursuant to this chapter, except that no deductible plan shall be approved unless the insurer shall retain the ultimate responsibility for the payment of compensable claims. Where the agreement provides for the payment of the deductible amount by the insurer, the insurer shall pay all the deductible amount applicable to a compensable claim directly to the person or health care provider entitled to the benefit pursuant to this chapter, and shall then be reimbursed by the insured employer for such payments. The insured employer shall be liable to the insurer up to the limit of the deductible, and any failure on the part of the insured employer to provide such reimbursements shall be treated under the workers' compensation policy in the same manner as a nonpayment of premium. An employer's failure to reimburse deductible amounts to the insurer shall not cause the unpaid amount to be paid from the second injury fund under section 287.220. The insurer shall have the right to offset unpaid deductible amounts against unearned premiums, if any, in the event of a cancellation of the policy.

4. Deductible plans shall provide appropriate premium reductions, as approved by the director of the department of insurance, financial institutions and professional registration, to reflect the type and level of the deductible amount selected. Losses paid by the employer under the deductible shall be credited against the employer's experience modification while the deductible option is used, unless the employer exercises the right to purchase a gross reportable deductible plan.

5. An insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the employer does not have the financial ability to be responsible for the payment of deductible amounts.

6. An insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount.

7. No employer who self-insures for a deductible amount as provided in this section shall harass, discharge, or otherwise discriminate against any employee because the employee has taken any action or is considering taking action which might result in the insured employer being required to pay a deductible amount.

8. Any rating organization or advisory organization authorized by the provisions of section 287.330 may file on behalf of its members deductible plans for approval by the director of the department of insurance, financial institutions and professional registration.

9. In calculating the administrative surcharge owed pursuant to the provisions of this chapter for workers' compensation policies with deductible options, the administrative surcharge owed will be based upon the total premiums, which would have been paid for the deductible credit portion of the policy. The second injury fund surcharge owed by the employer who purchases a deductible policy will be assessed upon the total premiums which would have been paid in the absence of the deductible option. The premium taxes owed pursuant to this chapter for workers' compensation policies with deductible options shall be assessed upon those total premiums paid upon the insurance policy excluding the deductible credit portion of the policy. The portion of the workers' compensation policy with a deductible option that is subject to an administrative surcharge shall not be subject to premium taxes, nor with respect to foreign insurance companies, the retaliatory tax imposed pursuant to section 375.916.

10. The director of the department of insurance, financial institutions and professional registration shall, by rule, specify any data reporting requirements applicable to workers' compensation policies with deductible options.

(RSMo 1939 § 3716, A.L. 1992 H.B. 975, A.L. 2003 S.B. 385)

Prior revision: 1929 § 3326

Determinations review board, created, purpose--code classifications,classification system, review of, duties.

287.335. 1. There is hereby established the "Workers' Compensation Determinations Review Board" within the department of insurance, financial institutions and professional registration which shall exist to review determinations by an insurer or advisory organization regarding uniform code classifications, basic manual rule interpretations, uniform experience rating plan rule interpretations, calculations of an individual employer's modification factor, Missouri assigned risk plan underwriting rule interpretations, and any other related uniform rule interpretations not addressed by department rule or regulation. The board shall consist of five persons who shall be voting members appointed by the governor, with the advice and consent of the senate, who shall serve at the pleasure of the governor. Three members shall be representative of the interests of employers with at least one being representative of employers whose employees are represented by a labor union and at least one being representative of employers whose employees are not represented by a labor union. One member shall be a representative of the interests of insurers, and one member shall be a representative of the interests of independent insurance agents. One member representing employers shall act as chairman of the board elected by the board. Not more than three

members of the board shall belong to the same political party. Each member shall serve for a term of three years, except that of the members first appointed, two shall be appointed for a term of one year, two for a term of two years, and one for a term of three years. Vacancies on the board shall be filled for the unexpired term in the same manner as original appointments are made. The state actuary and a representative of a rating organization licensed by the state shall be nonvoting members of the board, and their duties shall include advising the board on matters relating to code classifications, including the creation of new code classifications. The board members shall not receive any compensation, except that such members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. In addition, the board may employ staff to perform the administrative duties of the board. The department of insurance, financial institutions and professional registration may charge a fee against the classification agent as the director deems appropriate.

2. Upon application of any employer, the board shall review the code classification made on that employer. If the board determines that the classification was erroneous, it may change the classification by placing the employer under a different code classification already established or by creating a new classification code, if the board determines that there is sufficient experience to merit a new classification code. The establishment of the rate for a new classification code shall be filed with the director of the department of insurance, financial institutions and professional registration by either the affected employer or employers or by any recognized rating organization within ninety days of the establishment of the new classification code by the board. The director of the department of insurance, financial institutions and professional registration shall review the filed rate according to section 287.955. Upon application of any employer, the board shall review the calculation of an employer's experience modification factor and may order a recalculation in the experience modification factor if calculated erroneously under the formula as approved by the director of the department of insurance, financial institutions and professional registration, including an adjustment for any recovery from a third party pursuant to the employer's right of subrogation. An appeal from the determination of an appropriate classification by the board may be made to the director of the department of insurance, financial institutions and professional registration. The board may review code classifications of individual self-insured employers and self-insured employers in a group insurance arrangement.

3. The board may also recommend changes to the uniform classification system.

4. The advisory organization that makes a uniform classification system for use in setting rates in this state shall provide to the affected party or his designated agent, at a reasonable charge, information used or considered in determining the development purpose, scope and intended application of any classification comprising such uniform classification system.

(L. 1992 H.B. 975, A.L. 1993 S.B. 251)

Effective 1-1-94

Insurance companies must keep reserve.

287.340. No insurance carrier shall write any insurance against liability hereunder unless it maintains such reserves as are required by law, or in the absence thereof such reserves as may be required by the director of the department of insurance, financial institutions and professional registration, the power to require and regulate which is hereby vested in said director.

(RSMo 1939 § 3718)

Prior revision: 1929 § 3328

Insurance companies to make report.

287.350. Every insurance carrier writing insurance for liability hereunder, or the liability of employers rejecting this chapter, shall report to the director of the department of insurance, financial institutions and professional registration, in accordance with such rules as he may adopt, such information as he may at any time require for the purpose of determining the solvency of carrier or the fairness, reasonableness and adequacy of its rates, and for such purposes the director may inspect the books and records of such carriers and examine its officers, agents and servants under oath.

(RSMo 1939 § 3719)

Prior revision: 1929 § 3329

Director may suspend or revoke permits and ask for a receiver.

287.360. For any violation of the provisions of this chapter the director of the department of insurance, financial institutions and professional registration may suspend or revoke the authority of any insurance carrier to do business in this state. If any insurance carrier fails or delays to pay any compensation finally determined to be due, the director shall hear the

complaint, and if such failure is without reasonable excuse he may revoke or suspend the authority of such carrier to do business in this state, and in a proper case may apply for the appointment of a receiver for such carrier.

(RSMo 1939 § 3720)

Prior revision: 1929 § 3330

Compensation in lieu of insurance, how provided.

287.370. Any employer or group of employers may enter into or continue any agreement with his or their employees to provide a system of compensation benefits or insurance in lieu of the compensation and insurance provided by this chapter. Such substitute system and insurance shall be subject to the approval of the director of the department of insurance, financial institutions and professional registration and shall not be approved by him unless they confer benefits upon injured employees or their dependents at least equivalent to the benefits provided by this chapter, nor if they require contributions from employees, unless they confer benefits in addition to those provided under this chapter at least commensurate with such contribution. Appeals shall lie to the commission from any decision, award or order made by or under such substitute system. Such substitute system and insurance may be terminated by the director of the department of insurance, financial institutions and professional registration on reasonable notice and hearing to the interested parties, if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency or if for any other substantial reason it fails to accomplish the purposes of this chapter; and in this case the director of the department of insurance, financial institutions and professional registration shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to have such action reviewed by a court of competent jurisdiction.

(RSMo 1939 § 3721)

Prior revision: 1929 § 3331

Employer or insurer to make report to division,requirements--information not to be disclosed--failure to report,penalty.

287.380. 1. Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within thirty days after knowledge of the injury, file with the division under such rules and regulations and in such form and detail as the division

may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or injured employee, the time and cause of the accident, the nature and extent of the injury, the name and address of the employee's and the employer's or insurer's attorney of record, if any, the medical cost incurred in treating the injured employee, the amount of lost work time of the employee as a result of the injury and such other information as the director may reasonably require in order to maintain in the division, accurate and complete data on the impact of work-related injuries on the workers' compensation system. The division shall collect and maintain such data in such a form as to be readily retrieved and available for analysis by the division. Employers shall report all injuries to their insurance carrier, or third-party administrators, if applicable, within five days of the date of the injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. Where an employer reports injuries covered pursuant to this chapter to his insurer or third-party administrator, the insurer or third-party administrator shall be responsible for filing the report prescribed in this section.

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

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

4. Any person, including any employer, insurer or any employee, who violates any of the provisions of this section, including any employer or insurer who knowingly fails to report any accident under the provisions of subsection 1 of this section, or anyone who knowingly makes a false report or statement in writing to the division or the commission, shall be deemed guilty of

a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both the fine and imprisonment.

(RSMo 1939 § 3722, A.L. 1965 p. 397, A.L. 1980 H.B. 1396, A.L. 1983 H.B. 243 & 260, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3332

Compromise settlements, how made--validity, effect, settlement withminor dependents--employee entitled to one hundred percent of offer,when.

287.390. 1. Parties to claims hereunder may enter into voluntary agreements in settlement thereof, but no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. An administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement.

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

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

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

5. In any claim under this chapter where an offer of settlement is made in writing and filed with the division by the employer, an employee is entitled to one hundred percent of the amount offered, provided such employee is not represented by counsel at the time the offer is tendered. Where such offer of settlement is not accepted and where additional proceedings occur with regard to the employee's claim, the employee is entitled to one hundred percent of the amount initially offered. Legal counsel representing the employee shall receive reasonable fees for services rendered.

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

(RSMo 1939 § 3723, A.L. 1959 S.B. 167, A.L. 1965 p. 397, A.L. 1977 S.B. 400, A.L. 1983 S.B. 44 & 45, A.L. 1990 S.B. 751, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3333

(2011) Section requires Labor and Industrial Relations Commission to approve valid agreements, including a structured settlement agreement on claim for death benefits for employee's widow and children. Roth v. J.J. Brouk & Co. Corp., 356 S.W.3d 786 (Mo.App.E.D.).

Accident--duty of division--employer.

287.400. Upon receipt of notice of any accident for which compensation other than that provided in section 287.140 is payable, the division shall inform the employee generally of his rights under this chapter. The employer shall notify the division as soon as payment of compensation is commenced and when terminated, and shall file with the division, at the time of notice of termination, a physician's report. In the event a dispute arises between the employer and the employee regarding the payment of compensation, the division shall assist the employee in filing a claim and securing an early adjudication thereof.

(RSMo 1939 § 3724, A.L. 1947 V. II p. 447, A.L. 1965 p. 397)

Prior revision: 1929 § 3334

Powers and functions of the division of workers' compensation.

287.410. The division shall have and exercise such of the powers and functions of the commission in the administration of the workers' compensation law as the commission may by regulation prescribe; provided, however, that the power and duty to review any award made under the workers' compensation law, as authorized by sections 287.470 and 287.480, may not

be delegated, but such power and duty shall be exercised exclusively by the commission; and provided further, that the commission shall exercise no authority with respect to the selection or tenure of office of any individual appointed or employed by the division in the administration of the workers' compensation law.

(L. 1945 p. 1996 § 3744A, A.L. 1980 H.B. 1396)

Written notice of injury to be given to employer--exceptions.

287.420. No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice. No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

(RSMo 1939 § 3726, A.L. 1965 p. 397, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3336

Limitation as to action, exception.

287.430. Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the

injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475. The statute of limitations contained in this section is one of extinction and not of repose.

(RSMo 1939 § 3727, A.L. 1941 p. 718, A.L. 1947 V. II p. 448, A.L. 1965 pp. 397, 419, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 S.B. 44 & 45, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3337

(2002) Use of term "extinction" indicates legislative intent that the two-year limitation is substantive and jurisdictional rather than procedural and waivable. Marston v. Juvenile Justice Center, 88 S.W.3d 534 (Mo.App.W.D.).

Limitation begins to run, when.

287.440. Where recovery is denied to any person in a suit brought at law or in admiralty to recover damages in respect of bodily injury or death on the ground that the person was an employee and the defendant was an employer subject to and within the meaning of this chapter, or when recovery is denied to any person in an action brought under the provisions of a workers' compensation law of any other state or jurisdiction on the ground that the person was an employee under and subject to the provisions of this chapter, the limitation of time prescribed in section 287.430 shall begin to run from the date of the ultimate termination or abandonment of such suit or compensation proceeding, when such suit or compensation proceedings are filed within two years after the filing by the employer of the report of injury or death complained of, or in case payments have been made on account of the injury or death, within two years from the date of the last payment.

(L. 1941 p. 717 § 3727a, A.L. 1947 V. II p. 445, A.L. 1965 p. 419, A.L. 1980 H.B. 1396)

Failure to agree on compensation--division to hold hearings.

287.450. If the employer and employee or his dependents do not agree in regard to compensation payable under this chapter, either party may make application in a manner determined by the division for a hearing in regard to the matters at issue and for a ruling thereon, except that no application for a hearing shall be considered until fourteen days after the receipt by the division of the report of accident required under section 287.380. The

fourteen-day waiting period is not applicable to applications for hardship hearings. After the application has been received, the division shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the interested parties of the time and place of the hearing.

(RSMo 1939 § 3728, A.L. 1947 V. II p. 447, A.L. 1965 p. 397, A.L. 1992 H.B. 975, A.L. 2012 H.B. 1540)

Prior revision: 1929 § 3338

Division hearings, findings sent to parties and insurer--mediationservices, division to establish procedures, requirements.

287.460. 1. The division, through an administrative law judge, shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute by issuing the written award within ninety days of the last day of the hearing. The hearing shall be concluded within thirty days of the date of commencement of the hearing, except in extraordinary circumstances where a lengthy trial or complex issues necessitate a longer time than ninety days. All evidence introduced at any such hearings shall be reported by a competent reporter appointed by the division or be recorded by electronic means. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent by electronic means or in the case of an unrepresented employee, by United States mail, to the parties in dispute and the employer's insurer.

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

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

(RSMo 1939 § 3729, A.L. 1945 p. 1996, A.L. 1953 p. 529, A.L. 1977 S.B. 400, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2012 H.B. 1540)

Prior revision: 1929 § 3339

Commission may review and change award.

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

(RSMo 1939 § 3730)

Prior revision: 1929 § 3340

Application for review, time limit--when deemed filed--bond required,when.

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

2. An employer who has been determined by the division to be an employer subject to and operating pursuant to this chapter and has also been determined to be uninsured may file an

application for review but such application for review shall be accompanied with and attached to the application for review a bond which shall be conditioned for the satisfaction of the award in full, and if for any reason the appeal is dismissed or if the award is affirmed or modified, to satisfy in full such modification of the award as the commission may award. The surety on such bond shall be a bank, savings and loan institution or an insurance company licensed to do business in the state of Missouri. No appeal to the commission shall be considered filed unless accompanied by such bond and such bond shall also be a prerequisite for appeal as provided in section 287.495 and such appeal pursuant to section 287.495 shall not be considered filed unless accompanied by such bond. If any other employer pursuant to section 287.040 would be liable, the employee shall be paid benefits from the bond until the bond is exhausted before the section287.040 employer is required to pay.

(RSMo 1939 § 3731, A.L. 1963 p. 410, A.L. 1974 S.B. 417, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3341

CROSS REFERENCE:

Workers' compensation claims to be reviewed only by administrative law judges, commission or appellate courts,287.801

Final award conclusive unless an appeal is taken--grounds for settingaside--disputes governed by this section, claims arising beforeAugust 13, 1980.

287.490. 1. The final award of the commission shall be conclusive and binding unless either party to the dispute shall within thirty days from the date of the final award appeal to the circuit court of the county in which the accident occurred, or if the accident occurred outside of this state, then in the county where the contract of employment was made. Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Upon appeal no additional evidence shall be heard and in the absence of fraud, the findings of fact made by the commission within its powers shall be conclusive and binding. The court, on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

(1) That the commission acted without or in excess of its powers;

(2) That the award was procured by fraud;

(3) That the facts found by the commission do not support the award;

(4) That there was not sufficient competent evidence in the record to warrant the making of the award.

2. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the commission, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The commission shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the commission filed as a part of the transcript on appeal shall be certified back to the commission by the appellate court. In all appeals from the commission or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit and appellate courts shall have precedence over all cases except election contests.

3. The provisions of this section shall only apply to disputes based on claims which arose prior to August 13, 1980. All disputes based on claims arising on or after August 13, 1980, shall be governed by the provisions of section 287.495.

(RSMo 1939 § 3732, A.L. 1955 p. 598, A.L. 1980 H.B. 1396)

Prior revision: 1929 § 3342

Final award conclusive unless an appeal is taken--grounds for settingaside--disputes governed by this section, claims arising on or afterAugust 13, 1980.

287.495. 1. The final award of the commission shall be conclusive and binding unless either party to the dispute shall, within thirty days from the date of the final award, appeal the award to the appellate court. The appellate court shall have jurisdiction to review all decisions of the commission pursuant to this chapter where the division has original jurisdiction over the case. Venue as established by subsection 2 of section 287.640 shall determine the appellate court which hears the appeal. Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall, under its certificate, return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Upon appeal no additional evidence shall be heard and, in the absence of fraud, the findings of fact made by the commission within its powers shall be conclusive and binding. The court, on appeal, shall review

only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

(1) That the commission acted without or in excess of its powers;

(2) That the award was procured by fraud;

(3) That the facts found by the commission do not support the award;

(4) That there was not sufficient competent evidence in the record to warrant the making of the award.

2. The provisions of this section shall apply to all disputes based on claims arising on or after August 13, 1980.

(L. 1980 H.B. 1396, A.L. 1998 H.B. 1237, et al.)

(2003) A reviewing court is not required to view evidence and all reasonable inferences therefrom in light most favorable to Labor and Industrial Relations Commission award. Hampton v. Big Boy Steel Erection, 121 S.W.3d 220 (Mo.banc).

Circuit court may act upon memorandum--procedure.

287.500. Any party in interest may file in the circuit court of the county in which the accident occurred, a certified copy of a memorandum of agreement approved by the division or by the commission or of an order or decision of the division or the commission, or of an award of the division or of the commission from which an application for review or from which an appeal has not been taken, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment were a final judgment which had been rendered in a suit duly heard and determined by said court. Any such judgment of said circuit court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court, whenever modified on account of a changed condition under section 287.470, shall be modified to conform to any decision of the commission, ending, diminishing or increasing any weekly payment under the provisions of section 287.470 upon the presentation to it of a certified copy of such decision.

(RSMo 1939 § 3733, A.L. 1963 p. 410)

Prior revision: 1929 § 3343

Temporary or partial awards may be made.

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

(RSMo 1939 § 3734, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3344

Notice--manner of serving.

287.520. 1. Any notice required under this chapter shall be deemed to have been properly given and served when sent by registered or certified mail properly stamped and addressed to the person or entity to whom given, at the last known address in time to reach the person or entity in due time to act thereon, or to counsel for that person or entity in like manner. Notice may also be given and served in like manner as summons in civil actions.

2. Notwithstanding the provisions of subsection 1 of this section, the division may serve or send any notices required under this chapter by electronic means, except that any notices required to be sent to an employee not represented by counsel shall be sent by registered or certified mail to the last known address of the employee unless the employee consents to receive notices by electronic means. In the event the employee is represented by counsel and counsel is sent proper notice under this chapter, notice to the employee may be sent by regular mail.

(RSMo 1939 § 3735, A.L. 1965 p. 397, A.L. 1987 H.B. 564, A.L. 2012 H.B. 1540)

Prior revision: 1929 § 3345

Commission or division may commute compensation, when and how.

287.530. 1. The compensation provided in this chapter may be commuted by the division or the commission and redeemed by the payment in whole or in part, by the employer, of a lump sum which shall be fixed by the division or the commission, which sum shall be equal to the commutable value of the future installments which may be due under this chapter, taking account of life contingencies, the payment to be commuted at its present value upon application of either party, with due notice to the other, if it appears that the commutation will

be for the best interests of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the greater part of his business or assets.

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

(RSMo 1939 § 3736, A.L. 1965 p. 397, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3346

Compensation commuted--funds, how paid out.

287.540. On notice to the other parties the commission or court may permit the employer to be discharged from further liability under any agreement, award or judgment for compensation by furnishing to the person entitled thereto an annuity or other obligation, approved by the commission or court, by which payment is assumed by some responsible person, or by depositing the commutable value thereof with the commission to be disbursed to the persons entitled thereto in such manner as the commission shall determine.

(RSMo 1939 § 3737)

Prior revision: 1929 § 3347

Proceedings before commission to be informal and summary.

287.550. All proceedings before the commission or any commissioner shall be simple, informal, and summary, and without regard to the technical rules of evidence, and in accordance with section 287.800. All such proceedings shall be according to such rules and regulations as may be adopted by the commission.

(RSMo 1939 § 3739, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3349

Division or commission may administer oaths, issue process, takedepositions--depositions may be taken by electronic means--costs, howpaid.

287.560. The division, any administrative law judge thereof or the commission, shall have power to issue process, subpoena witnesses, administer oaths, examine books and papers, and require the production thereof, and to cause the deposition of any witness to be taken and the costs thereof paid as other costs under this chapter. Any party shall be entitled to process to compel the attendance of witnesses and the production of books and papers, and at his own cost to take and use depositions in like manner as in civil cases in the circuit court, except that depositions may be recorded by electronic means. The party electing to record a deposition by electronic means shall be responsible for the preparation and proper certification of the transcript and for maintaining a copy of the tape or other medium on which the deposition was recorded for the use of the division or any party upon request. Copies of the transcript shall be provided to all parties at a cost approved by the division. Subpoena shall extend to all parts of the state, and may be served as in civil actions in the circuit court, but the costs of the service shall be as in other civil actions. Each witness shall receive the fees and mileage prescribed by law in civil cases, but the same shall not be allowed as costs to the party in whose behalf the witness was summoned unless the persons before whom the hearing is had shall certify that the testimony of the witness was necessary. All costs under this section shall be approved by the division and paid out of the state treasury from the fund for the support of the Missouri division of workers' compensation; provided, however, that if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them. The division or the commission may permit a claimant to prosecute a claim as a poor person as provided by law in civil cases.

(RSMo 1939 § 3740, A.L. 1965 p. 397, A.L. 1980 H.B. 1396, A.L. 1993 S.B. 251)

Prior revision: 1929 § 3350

Contempt--penalty.

287.570. If any person subpoenaed to appear at any hearing or proceeding, fails to obey the command of such subpoena without reasonable cause, or if any person at attendance at any hearing or proceeding shall without reasonable cause, refuse to be sworn, or to be examined, or to answer a question, or to produce a book or paper or to subscribe or swear to his deposition, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail

for not more than one year, or by both such fine and imprisonment, and may be prosecuted therefor in any court of competent jurisdiction, and in case of a continuing violation, each day's continuance thereof shall be, and deemed to be, a separate and distinct offense.

(RSMo 1939 § 3741)

Prior revision: 1929 § 3351

Death, pending proceedings--action shall not abate.

287.580. If any party shall die pending any proceedings under this chapter, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

(RSMo 1939 § 3742)

Prior revision: 1929 § 3352

Division may be sued--official seal.

287.590. The division may sue and be sued in its official name. The division shall have an official seal bearing the inscription: "The Division of Workers' Compensation of the Department of Labor and Industrial Relations". The official seal of the commission or division shall be affixed to all writs and authentication of copies of records, papers on file, and to such other instruments as the commission or division shall direct. Copies of the records and proceedings of the commission or division, and of all papers on file in its office, certified under the seal, shall be evidence in all courts of the state.

(RSMo 1939 § 3746, A.L. 1945 p. 1996, A.L. 1965 p. 397, A.L. 1980 H.B. 1396)

Prior revision: 1929 § 3356

CROSS REFERENCES:

Director of division of workers' compensation, 286.120

Division of workers' compensation in state department of labor and industrial relations created, 286.110

Oath of office.

287.600. Each person appointed to office of employment by the division shall, before entering upon his duties, take and subscribe to an oath or affirmation to support the

Constitution of the United States, and of this state, and to faithfully and honestly discharge the duties of such office or employment. Each person appointed to office by the division shall give his whole time to his duties, nor shall he serve on any committee of any political party.

(RSMo 1939 § 3745, A.L. 1945 p. 1996, A.L. 1947 V. II p. 445)

Prior revision: 1929 § 3355

Additional administrative law judges, appointment and qualification,limit on number--annual evaluations--review committee, retentionvote--jurisdiction, powers--continuing trainingrequired--performance audits required--rules.

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

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

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

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

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

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

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

8. (1) The administrative law judge review committee shall conduct a performance audit of all administrative law judges every two years. The audit results, stating the committee's recommendation of confidence or no confidence of each administrative law judge shall be sent

to the governor no later than the first week of each legislative session immediately following such audit. Any administrative law judge who has received three or more votes of no confidence under two successive performance audits by the committee may have their appointment immediately withdrawn.

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

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

(RSMo 1939 § 3747, A.L. 1945 p. 1996, A.L. 1951 p. 611, A.L. 1955 p. 599, A.L. 1957 p. 530, A.L. 1959 S.B. 209, H.B. 93, A.L. 1961 p. 428, A.L. 1977 S.B. 400, A.L. 1980 H.B. 1396, A.L. 1987 H.B. 564, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2001 S.B. 267, A.L. 2005 S.B. 1 & 130, A.L. 2013 S.B. 1)

Prior revision: 1929 § 3357

Effective 1-01-14

Employees of division--compensation--selection.

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

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

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

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

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

(RSMo 1939 § 3747, A.L. 1945 p. 1996, A.L. 1951 p. 611, A.L. 1955 p. 599, A.L. 1957 p. 530, A.L. 1959 S.B. 209, H.B. 93 § 287.610, A.L. 1961 p. 428, A.L. 1963 p. 411, A.L. 1965 p. 419, A.L. 1967 p. 392, A.L. 1971 S.B. 190, A.L. 1978 H.B. 1260, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1984 S.B. 528, A.L. 1987 H.B. 564, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3357

Effective 1-01-06

*Revisor's note: Salary adjustment index is printed, as required by § 105.005, in Appendix E.

Attorney general legal adviser.

287.620. It shall be the duty of the attorney general to furnish the division or the commission with such legal services as may be required, and to appear on behalf of the division or the commission in all actions or proceedings to which they may be a party.

(RSMo 1939 § 3748, A.L. 1965 p. 397)

Prior revision: 1929 § 3358

Forms, other material furnished by commission and division.

287.630. The division and the commission shall prepare and furnish free of charge blank forms of all notices, claims, reports, proofs, and other blank forms and literature which they may deem proper and requisite to the efficient administration of this chapter. They may also authorize the publication and distribution of the blanks by employers and other persons.

(RSMo 1939 § 3749, A.L. 1965 p. 397)

Prior revision: 1929 § 3359

Necessary offices to be provided, where--salaries--traveling expenses,how paid--hearings, where held.

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

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

3. Hearings before the labor and industrial relations commission on review may be held at the place the commission determines, having due regard for the convenience of the parties.

(RSMo 1939 § 3750, A.L. 1947 V. II p. 449, A.L. 1955 p. 594, A.L. 1957 p. 518, A.L. 1980 H.B. 1396, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3360

Public information programs, division to establish.

287.642. The division of workers' compensation shall create in each of its area offices a public information program to assist all parties involved with an injury or claim under this chapter.

(L. 1992 H.B. 975 § 1, A.L. 2005 S.B. 1 & 130)

Division to make rules and regulations--power to destroy reports,when--rules.

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

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

(2) Records in cases that are submitted for hearing in the division shall include all documentary exhibits admitted as evidence at the hearing. Records in all other cases shall include all documents required to be filed with the division by this chapter or by rule of the division, medical reports or records which are relied upon by the administrative law judge or legal advisor in approving the compromise lump sum settlement, and copies of the compromise lump sum settlement. These records shall be kept and stored by the division for a minimum of ten years and shall include the originals or duplicate originals stored by electronic or other means approved by the division.

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

(RSMo 1939 § 3751, A.L. 1949 p. 627, A.L. 1961 p. 430, A.L. 1980 H.B. 1396, A.L. 1993 S.B. 251, A.L. 1995 S.B. 3, A.L. 1998 H.B. 1237, et al., A.L. 2012 H.B. 1540)

Prior revision: 1929 § 3361

CROSS REFERENCE:

Rules to be filed with secretary of state, when effective, Chap. 536

Dismissal of claims, when, how, effect.

287.655. Any claim before the division may be dismissed for failure to prosecute in accordance with rules and regulations promulgated by the commission. Such notice shall be made in a manner determined by the division, except that for the employee such notice shall be by certified or registered mail unless the employee to whom notice is directed is represented by counsel and counsel is also given such notice. To dismiss a claim the administrative law judge shall enter an order of dismissal which shall be deemed an award and subject to review and appeal in the same manner as provided for other awards in this chapter.

(L. 1978 H.B. 1260 § 2, A.L. 1987 H.B. 564, A.L. 2012 H.B. 1540)

Fees.

287.660. 1. The division as agent of the department of revenue shall charge and collect the following fees, to be paid at least once each month into the state treasury to the credit of the fund for the support of the division of workers' compensation of the department of labor and industrial relations:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each one hundred words and figures;

(2) For certified copies of official documents, awards or other records, fifteen cents for each one hundred words and figures, and one dollar for every certificate under seal affixed thereto;

(3) For each certified copy of annual report of the commission, one dollar and fifty cents;

(4) For copies of evidence and proceedings, fifteen cents for each one hundred words and figures;

(5) Also all other fees and charges allowed or required to be collected under this chapter or any other law.

2. The division shall also fix and collect as agent of the department of revenue from the employer the reasonable expense of any investigation necessary to determine his ability to carry his own insurance. No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity, or for annual reports or other matters published by the commission, in the ordinary course of distribution, but the division may fix reasonable charges for publications issued under its authority.

(RSMo 1939 § 3752, A.L. 1945 p. 1996, A.L. 1980 H.B. 1396)

Prior revision: 1929 § 3362

No fees for services of public officers.

287.670. Every public officer, without exacting a fee or charge therefor, shall furnish the commission or the division, on application, with a certified copy of any document, or part thereof, on file in his office, and no public officer shall be entitled to receive from the commission or the division any fee for entering, filing, docketing or recording any document required or authorized by law to be filed in his office.

(RSMo 1939 § 3753, A.L. 1965 p. 397)

Prior revision: 1929 § 3363

Annual report to governor.

287.680. The commission and division shall make and submit to the governor, on or before the first day of February, in each year, a report containing a full and complete account of its transactions and proceedings under this chapter for the preceding year, together with all statistics and information collected by the division, and such other facts, suggestions and recommendations as it may deem of value, which report shall be laid before the legislature.

(RSMo 1939 § 3754, A.L. 1945 p. 1996, A.L. 1965 p. 397)

Prior revision: 1929 § 3364

Premium tax on insurance carriers, purpose, rate, how determined--useof funds for employers mutual insurance company, purpose.

287.690. 1. Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter and for the purpose set out in subsection 2 of this section, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or

on account of business done in this state, for such insurance in this state at the rate of two percent in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, 1994. If the balance of the fund estimated to be on hand on December thirty-first of the year each tax rate determination is made is less than one hundred ten percent of the previous year's expenses plus any additional revenue required due to new statutory requirements given to the division by the general assembly, then the director shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed and collected as herein provided. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section537.620 shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following year. Net premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross assessments less cancelled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

2. After January 1, 1994, the director of the division shall make one or more loans to the Missouri employers mutual insurance company in an amount not to exceed an aggregate amount of five million dollars from the fund maintained to administer this chapter for start-up funding and initial capitalization of the company. The board of the company shall make application to the director for the loans, stating the amount to be loaned to the company. The loans shall be for a term of five years and, at the time the application for such loans is approved

by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758.

(RSMo 1939 § 3755, A.L. 1955 p. 590, A.L. 1971 H.B. 321, A.L. 1987 H.B. 564, A.L. 1988 H.B. 1244, A.L. 1993 S.B. 251, A.L. 1994 S.B. 701)

Prior revision: 1929 § 3365

CROSS REFERENCE:

Director of the department of insurance, financial institutions and professional registration or director of revenue may make supplemental assessment, when, 374.245

Returns delinquent--duty of director.

287.700. If any such insurance carrier shall fail or refuse to make the return required by this chapter, the said director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this chapter on such amount of* premiums or deposits as he shall deem just, and the proceedings thereon shall be the same as if the return had been made.

(RSMo 1939 § 3756)

Prior revision: 1929 § 3366

*Word "or" appears in original rolls.

Tax returns--payments--use of proceeds--funds and interest not tolapse.

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

2. The amount of the tax due for each calendar year shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the application of the current calendar year's tax rate to the premium for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance, financial institutions and professional registration of the amount of tax due from the various companies

or self-insurers, the director of revenue shall notify and assess each company or self-insurer the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company or self-insurer the amount of the estimated quarterly installments to be made for the calendar year. If the amount of the actual tax due for any year exceeds the total of the installments made for such year, the balance of the tax due shall be paid on the first day of June of the year following, together with the regular quarterly payment due at that time. If the total amount of the tax actually due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall be credited against the tax for the following year and deducted from the quarterly installment otherwise due on the first day of June. If the March first quarterly installment made by a company or self-insurer is less than the amount assessed by the director of revenue, the difference will be due on June first, but no interest will accrue to the state on the difference unless the amount paid by the company or self-insurer is less than eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable year.

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

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

5. The tax collected for implementing the workers' compensation fund, and any interest accruing thereon, under the police power of the state from those specified in sections 287.690, 287.715, and 287.730 shall be used for the purpose of making effective the law to relieve victims of industrial injuries from having individually to bear the burden of misfortune or becoming charges upon society and for the further purpose of providing for the

physical rehabilitation of the victims of industrial injuries, and for no other purposes. It is hereby made the express duty of every person exercising any official authority or responsibility in and for the state of Missouri sacredly to safeguard and preserve all funds collected, and any interest accruing thereon, under and by virtue of sections 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

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

(RSMo 1939 § 3757, A.L. 1945 p. 1996, A.L. 1953 p. 524, A.L. 1955 p. 590, A.L. 1967 p. 392, A.L. 1971 H.B. 321, A.L. 1977 H.B. 182, A.L. 1980 H.B. 1396, A.L. 1982 S.B. 470, A.L. 1986 S.B. 545, A.L. 1987 H.B. 564, A.L. 1988 H.B. 1244, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3367

Director, report of expenditures.

287.713. The director of the division of workers' compensation shall make and submit to the governor, on or before the first day of February, in each year, a report on the expenditures made from the second injury fund in each of the four categories of liability for the calendar year next preceding and shall make and prepare, as is required, budget requests for payments from the second injury fund.

(RSMo 1939 § 3757, A.L. 1945 p. 1996, A.L. 1953 p. 524, A.L. 1955 p. 590, A.L. 1967 p. 392 § 287.710.8, A.L. 1980 H.B. 1266, H.B. 1396, A.L. 1982 H.B. 1605)

Annual surcharge required for second injury fund, amount, howcomputed, collection--violation, penalty--supplemental surcharge,amount.

287.715. 1. For the purpose of providing for revenue for the second injury fund, every authorized self-insurer, and every workers' compensation policyholder insured pursuant to the provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with the provisions of this section. The annual surcharge imposed under this section shall apply to all workers' compensation insurance policies and self-insurance coverages which are written or

renewed on or after April 26, 1988, including the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any law to the contrary, the surcharge imposed pursuant to this section shall not apply to any reinsurance or retrocessional transaction.

2. Beginning October 31, 2005, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the following calendar year and shall calculate the total amount of the annual surcharge to be imposed during the following calendar year upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the following calendar year commencing with the calendar year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys to be paid from the second injury fund in the following calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section537.620 shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its

agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

3. All surcharge amounts imposed by this section shall be deposited to the credit of the second injury fund.

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

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

*6. Notwithstanding subsection 2 of this section to the contrary, the director of the division of workers' compensation shall collect a supplemental surcharge not to exceed three percent for calendar years 2014 to 2021 of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point. All policyholders and self-insurers shall be notified by the division of the supplemental surcharge percentage to be imposed for such period of time as part of the notice provided in subsection 2 of this section. The provisions of this subsection shall expire on December 31, 2021.

7. Funds collected under the provisions of this chapter shall be the sole funding source of the second injury fund.

(L. 1959 S.B. 167 § 287.695, A.L. 1971 H.B. 321, A.L. 1982 S.B. 470, A.L. 1986 S.B. 545, A.L. 1988 H.B. 1244, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130, A.L. 2013 S.B. 1)

Effective 1-01-14

*Subsection 6 terminates 12-31-21

Surcharge on deductible plan policyholders, when, calculationof--notification of policyholders.

287.716. 1. For the purpose of providing funds for the administration of the workers' compensation division, the division director shall impose an annual administrative surcharge upon every workers' compensation deductible plan policyholder insured pursuant to the provisions of this chapter. An annual administrative surcharge imposed pursuant to this section shall apply to all workers' compensation policies with a deductible option that are written or renewed on or after January 1, 2004.

2. In calculating the administrative surcharge owed pursuant to the provisions of this chapter for workers' compensation policies with deductible options, the administrative surcharge owed will be based upon the total premiums, which would have been paid for the deductible credit portion of the policy. The annual administrative surcharge assessed shall be set at the same rate as the premium tax imposed by section 287.690 for each calendar year.

3. All workers' compensation insurers shall be notified by the division of workers' compensation within ten days of the determination of the administrative surcharge percentage to be imposed for, and paid in, the following calendar year.

(L. 2003 S.B. 385)

Surcharge collection, procedure--failure to pay, interest assessed,when.

287.717. 1. Beginning January 1, 2004, the administrative surcharge established pursuant to section 287.716 shall be collected from deductible plan policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the administrative surcharge as a fee or commission for its collection. The administrative surcharge is not subject to any taxes, licenses, or fees.

2. All administrative surcharges imposed pursuant to section 287.716 shall be paid to the Missouri director of revenue and shall be deposited to the workers' compensation administrative fund.

3. The amount of the administrative surcharge due for the current calendar year shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the amount of administrative surcharge payable in the calendar year for which the surcharge is imposed. The quarterly installments shall be made on the first day of March, the first day of June, the first day of

September, and the first day of December. On or before the first day of March of each year, every such insurer shall submit a report, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, financial institutions and professional registration, stating the amount of all such total premiums which would have been paid for the deductible portion.

4. If after the end of any calendar year, the amount of the actual administrative surcharge due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall only be credited against the administrative surcharge for the following year and deducted from the quarterly installment due on June first and any other payments required by this section until the credit is exhausted. In the event no such payments are due and upon application of the insurer, the director of revenue may refund the amount of credit if no other obligation is owed to the state.

5. If a deductible plan policyholder fails to make payment of the administrative surcharge, or an insurer fails to make timely transfer to the director of revenue of administrative surcharges actually collected from deductible plan policyholders, as required by this section, a late charge of one-half of one percent of the administrative surcharge unpaid, or transferred, shall be assessed against the liable deductible plan policyholder or insurer. Late charges assessed pursuant to this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.

6. If the administrative surcharges imposed by this section are not paid when due, the deductible plan policyholder or insurer shall be required to pay, as part of such administrative surcharge, interest thereon at the rate of one and one-half percent per month for each month or fraction thereof delinquent. In the event the state prevails in any dispute concerning an assessment of the administrative surcharge, which has not been paid by the policyholder or insurer, interest shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction thereof delinquent.

7. The division may authorize electronic transfer of all forms, reports, payments, and other information deemed appropriate by the division as required pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716. Information filed pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716 and under any rules promulgated by the division pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716 shall be confidential and not subject to chapter 610.

8. This section shall not apply to any employer or group of employers authorized by the division to self-insure their liability pursuant to this chapter.

(L. 2003 S.B. 385)

Companies withdrawing from state liable for taxes imposed--departmentof revenue empowered to collect.

287.720. If any such insurance carrier shall withdraw from business in this state before the tax shall fall due according to the provisions of this chapter, or shall fail or neglect to pay the tax imposed herein, the department of revenue shall at once proceed to collect the same, and it is hereby empowered and authorized to employ such legal process as may be necessary for that purpose and when so collected it* shall pay the same into the state treasury as a part of the fund for the support of the Missouri workers' compensation division. The suit may be brought by the department of revenue, in any court of this state having jurisdiction, reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the state, and may be served as in civil actions or in cases of unincorporated associations, partnerships, interindemnity contracts or other plans or scheme upon the principal agent of the parties thereto.

(RSMo 1939 § 3758, A.L. 1945 p. 1996, A.L. 1980 H.B. 1396)

Prior revision: 1929 § 3368

*Word "he" appears in original rolls.

Employer carrying own risk must pay tax.

287.730. Wherever the employer carries his risk or whatever substitute schemes for insurance provided for in section 287.370have been approved, the division shall inform the director of the department of insurance, financial institutions and professional registration, who, thereupon, shall assess and in like manner a similar tax shall be collected from the employer carrying his own risk at the same rate and on the same basis as taxes are assessed against insurance carriers, of any character, carrying like risks in this state under the provisions of this chapter.

(RSMo 1939 § 3759, A.L. 1945 p. 1996, A.L. 1965 p. 397)

Prior revision: 1929 § 3369

Compliance with provisions obligatory--penalty for violation.

287.740. Any person or persons who shall in this state act or assume to act as agent for any such insurance carrier whose authority to do business in this state has been suspended under this chapter, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of this chapter obligatory upon such person or party, or who shall willfully make a false or fraudulent statement of the business or condition of any such insurance carrier, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment.

(RSMo 1939 § 3760)

Prior revision: 1929 § 3370

Delinquent taxes, interest, rate--overpayment of taxes, credit.

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715 are not paid when due, the taxpayer shall be required to pay, as part of such tax, interest thereon at the rate of one and one-half percent per month for each month or fraction thereof delinquent. In the event the state prevails in any dispute concerning an assessment of tax which has not been paid by the taxpayer, interest shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction thereof delinquent.

2. In any legal contest concerning the amount of tax under sections 287.690, 287.710 and 287.715 for a calendar year, the quarterly installments for the following year shall continue to be made based upon the amount assessed by the director of revenue for the year in question. If after the end of any taxable year, the amount of the actual tax due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall at the election of the taxpayer be refunded or credited against the tax for the following year and in the event of a credit, deducted from the quarterly installment otherwise due on June first.

(L. 1982 S.B. 470, A.L. 2013 S.B. 1)

Effective 1-01-14

Sufficiency of notice.

287.750. Whenever by this chapter any officer is required to give any notice to any insurance carrier, the same may be given by mailing the same, postage prepaid, addressed to

the principal office of the insurance carrier or its agent in this state, or to its home or to the secretary, general agent or chief officer thereof in the United States.

(RSMo 1939 § 3761)

Prior revision: 1929 § 3371

Insurance carriers exempt from other tax, when.

287.760. Any insurance carrier, foreign or domestic, liable to pay a tax upon its premiums or deposits under this chapter shall not be liable to pay any other or further tax upon such premiums or deposits under any other law of this state.

(RSMo 1939 § 3762, A. 1949 S.B. 1103)

Prior revision: 1929 § 3372

Discrimination because of exercising compensation rightsprohibited--civil action for damages.

287.780. No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his rights under this chapter. Any employee who has been discharged or discriminated against shall have a civil action for damages against his employer.

(RSMo 1939 § 3725, A.L. 1973 H.B. 79)

Prior revision: 1929 § 3335

(2006) Section applies to employees alleging that an employer discharged them for previously filing workers' compensation claim against a former employer. Hayes v. Show Me Believers, Inc., 192 S.W.3d 706 (Mo.banc).

(2014) To make a submissible case for retaliatory discharge under this section, an employee must demonstrate his or her filing of a workers' compensation claim was a contributing factor to, rather than an exclusive cause of, the employer's discrimination or the employee's discharge. Templemire v. W & M Welding, Inc., 433 S.W.3d 371 (Mo.banc).

Penalty not specifically provided--misdemeanor.

287.790. Any person, corporation, his or its directors, officers or agents, or any other person who violates any of the provisions of this chapter for which a penalty has not herein been specifically provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than one week and not more than one year or both such fine and imprisonment.

(RSMo 1939 § 3763)

Prior revision: 1929 § 3373

Law to be strictly construed.

287.800. 1. Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly.

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

(RSMo 1939 § 3764, A.L. 1965 p. 397, A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3374

Review of claims, by whom.

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

(L. 2005 S.B. 1 & 130)

Waiver of compensation by employee, procedure.

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

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

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

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

(L. 2005 S.B. 1 & 130)

Burden of proof.

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

(L. 2005 S.B. 1 & 130)

Change of administrative law judge, procedure, limitations.

287.810. 1. A change of administrative law judge shall be ordered in any hearing held under this chapter upon the filing of a written application for such change by any party or his agent or attorney. The application need not allege or prove any cause for such change of administrative law judge, and need not be verified.

2. An application for change of administrative law judge must be filed at least thirty days before the hearing date or within five days after a hearing setting date has been made, whichever date is later, unless the administrative law judge who will hear the case has not been* designated within that time, in which event the application may be filed within ten days after the administrative law judge has been designated or at any time prior to the hearing, whichever date is earlier.

3. An application for change of administrative law judge may be made by one or more parties, but each party is limited to one such change of judge.

4. Upon the presentation of a timely application for the change of an administrative law judge, the commission shall promptly sustain the application and shall designate another administrative law judge.

(L. 1980 H.B. 1396)

*Word "be" appears in original rolls.

Discovery in workers' compensation cases, sections not to effect.

287.811. Nothing in sections 536.024, 536.025, 536.037, 536.060, 536.067, 536.073, and section 621.045 shall be deemed to govern discovery between parties in workers' compensation cases.

(L. 1995 S.B. 3 § 1)

Definitions.

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

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

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

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

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

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

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

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

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

(L. 1984 H.B. 1106, A.L. 1987 H.B. 564 merged with H.B. 713, A.L. 1994 H.B. 1149, A.L. 1997 H.B. 356, A.L. 1998 H.B. 971, A.L. 2005 S.B. 1 & 130, A.L. 2014 H.B. 1064)

*Section 287.616 was repealed by S.B. 1 & 130, 2005.

Retirement, administrative law judges and legaladvisors--participation in state employees' retirement systemrequired, when.

287.813. Any administrative law judge or legal advisor who is originally employed as such on or after April 26, 2005, and who has not previously been covered by the administrative law judge's and legal advisor's retirement system under sections 287.812 to287.856, shall not be eligible to participate in that system. Such administrative law judge or legal advisor shall participate in the state employees' retirement system under chapter 104 if otherwise eligible under the applicable provisions of law contained in that chapter.

(L. 2005 S.B. 202, et al.)

Effective 4-26-05

Retirement, age and service qualifications.

287.815. 1. Effective August 28, 1999, any person, sixty-two years of age or older, who has served or who has creditable service in this state for an aggregate of at least twelve years, or any person, sixty years of age or older, who has served or who has creditable service in this state for an aggregate of at least fifteen years or any person, fifty-five years of age or older, who has served or who has creditable service in this state for an aggregate of twenty years,

continuously or otherwise, as an administrative law judge or legal advisor, or both, of the division, and who, on or after August 13, 1984, ceases to hold office by reason of the expiration of his or her term, voluntary resignation, retirement pursuant to the provisions of sections 287.812 to 287.856, or removal by the governor for any nondisciplinary reason, shall receive benefits as provided in sections 287.812 to 287.856. The twelve years', fifteen years' or twenty years' requirement of this section may be fulfilled by service as an administrative law judge or legal advisor, or both, of the division at any time prior to or after August 13, 1984. If a person appointed pursuant to section286.010 or a chairman appointed pursuant to section 295.030 does not have twelve years' or fifteen years' service, as required pursuant to this subsection, as an administrative law judge or legal advisor, or both, but the person has served in the general assembly, each biennial assembly or partial biennial assembly either served or purchased shall be deemed and credited as two full years of creditable service as an administrative law judge or legal advisor if the person waives in writing all right to any other retirement benefit provided by his or her service as a member of the general assembly.

2. Any aggregate of twelve years or more of such service shall entitle the person to retirement benefits provided in sections287.812 to 287.856 regardless of whether or not the person was so employed upon reaching the age of eligibility as described in subsection 1 of this section. However, the retirement benefits shall not be paid to the person until that person attains the age of eligibility as described in subsection 1 of this section.

3. If a person appointed pursuant to section 286.010 or pursuant to section 295.030 or pursuant to section 621.015 or an attorney or legal counsel appointed or employed pursuant to section 286.070 does not have twelve years' service as an administrative law judge or legal advisor, or both, but the person has creditable service under the Missouri state employees' retirement system, such person may elect that such service be credited as service as an administrative law judge or legal advisor if the person waives in writing all right to any other retirement benefit provided for other service. Persons appointed pursuant to section 621.015 shall be required to have served a majority of a term in order to qualify for benefits pursuant to sections 287.812to 287.856.

4. Any person who has been appointed and has served pursuant to section 621.015, prior to August 28, 1999, who is receiving or thereafter is qualified to receive retirement benefits pursuant to section 104.374 shall upon application be made, constituted, appointed and employed by the board of trustees of the Missouri state employees' retirement system as a special consultant on the problems of retirement, aging and other state matters for the

remainder of the person's life. Upon request of the board or the administrative hearing commission, the consultant shall give opinions or be available to give opinions in writing or orally in response to such requests. As compensation for such services and in lieu of receiving benefits pursuant to section104.374, each such special consultant shall be eligible for all benefits payable pursuant to sections 287.812 to 287.856, effective upon the later of August 28, 1999, or the date retirement benefits become payable. In no event shall retroactive benefits be paid.

(L. 1984 H.B. 1106, A.L. 1987 H.B. 564 merged with H.B. 713, A.L. 1988 H.B. 1643 & 1399, A.L. 1994 H.B. 1149, A.L. 1998 H.B. 971, A.L. 1999 S.B. 308 & 314)

(2008) Retroactive application of amended section reducing age of eligibility from sixty-five to sixty-two to previously retired administrative law judge violates Article III, sections 38(a) and 39(3). Sihnhold v. Missouri State Employees' Retirement System, 248 S.W.3d 596 (Mo.banc).

Benefits, amount, how payable--exemption from execution, certainjudgment claims to be unassignable, exception--contributions tohealth care plan--consultants appointment, compensation, annualincreases, how computed.

287.820. 1. Retirement benefits shall be paid to the retired person in equal monthly installments during the remainder of the person's life. The annual amount of benefits paid shall be equal to fifty percent of the highest salary received during the person's period of service.

2. Except as provided in section 104.312, any annuity, benefits, funds, property or rights created by, or accruing to, any person under the provisions of sections 287.812 to 287.855 shall not be subject to execution, garnishment, attachment, writ of sequestration, or any other process or claim whatsoever, and shall be unassignable, except with regard to the collection of child support or maintenance. Any retired member of the system may request the executive director of the system, in writing, to withhold and pay on the retired member's behalf to the proper person, from each of the retired member's monthly retirement benefit payments, if the payment is large enough, the contribution due from the retired member to any group providing prepaid hospital care and any group providing prepaid medical and surgical care when such group is composed entirely of members of the system.

3. The executive director of the system shall, when requested in writing by a retired member, withhold and pay over the funds authorized in subsection 2 of this section until such time as the request to do so is revoked by the death or written revocation of the retired member.

4. Beginning January 1, 1989, any person who was employed prior to August 28, 1997, who is receiving or thereafter shall receive retirement benefits pursuant to sections 287.812 to 287.855 upon application to the board of trustees of the Missouri state employees' retirement system shall be made, constituted, appointed, and employed by the board as a special consultant on the problems of retirement, aging and other state matters for the remainder of the person's life. Upon request of the board or the court from which the person retired, the consultant shall give opinions or be available to give opinions in writing or orally in response to such requests. As compensation the consultant shall receive in addition to all other compensation provided by law a percentage increase in compensation each year computed upon the total amount that the consultant received in the previous year from state retirement benefits of eighty percent of the increase in the consumer price index calculated in the manner specified in section104.415. Any such annual increase in compensation, however, shall not exceed five percent, nor be less than four percent. The total increase in compensation pursuant to the provisions of this subsection to each special consultant who also receives benefits pursuant to sections 287.812 to 287.855 shall not exceed sixty-five percent of the initial benefit that the person receives after August 31, 1987. The total increase in compensation pursuant to the provisions of this subsection to each special consultant who also receives benefits pursuant to sections 287.812 to 287.855 shall not exceed sixty-five percent of the initial benefit that the person receives after January 1, 1989.

5. As additional compensation for the services described in subsection 4 of this section, each special consultant shall receive an annual percentage increase in the retirement benefit payable equal to eighty percent of the increase in the consumer price index. Such benefit increase, however, shall not exceed five percent of the retirement benefit payable prior to the increase. The annual benefit increase described in this subsection shall not be effective until the year in which the special consultant reaches the limit on total annual increases provided by subsection 4 of this section. During that year on the anniversary date of the special consultant's retirement, the special consultant shall receive the benefit increase described in subsection 4 of this section or this subsection, whichever is greater. After that year, the special consultant shall receive the annual benefit increase described in this subsection. Any special consultant who reaches the limit on total annual benefit increases provided by subsection 4 of this section prior to October 1, 1996, shall receive the benefit increase described in this subsection on September 1, 1997. Any special consultant who reaches the limit on total annual benefit increases provided by subsection 4 of this section on or after October 1, 1996, but before September 1, 1997, shall receive the benefit increase described in this subsection beginning on the anniversary date of

the special consultant's retirement following September 1, 1997. In no event shall any retroactive annual benefit increases be paid under this subsection to any special consultant who reached the limit provided in subsection 4 of this section prior to August 28, 1997.

6. Each person who is employed for the first time as an administrative law judge or a legal advisor on or after August 28, 1997, and retires shall be entitled annually to a percentage increase in the retirement benefit payable equal to eighty percent of the increase in the consumer price index. Such benefit increase, however, shall not exceed five percent of the retirement benefit payable prior to the increase.

7. Survivors of members described in subsection 6 of this section shall be entitled to the annual benefit increase described in subsection 6 of this section.

8. The compensation provided for in this section shall be payable in equal monthly installments and shall be consolidated with any retirement benefits. The compensation shall be paid from the retirement fund. The retirement fund shall be funded on an actuarial basis for such benefits as prescribed in section 287.845.

(L. 1984 H.B. 1106, A.L. 1987 H.B. 564, A.L. 1995 H.B. 416, et al., A.L. 1997 H.B. 356, A.L. 1998 S.B. 910)

Death of member before or after retirement--benefits of beneficiaries.

287.825. 1. On and after August 13, 1984, in the event that a person who is serving as an administrative law judge or legal advisor of the division dies, retirement benefits shall be paid in monthly installments to his beneficiary in the amount equal to fifty percent of the amount of the retirement benefits provided in section 287.820 regardless of the period of his service; except that where the period of service could not have been twelve years or more because of a voluntary or mandatory retirement provision, the retirement benefits provided by this subsection shall be reduced by the proportion that the number of years that he would have lacked serving twelve years had he been able to serve until voluntary or mandatory retirement bears to twelve years. The benefits to the beneficiary provided herein shall commence immediately upon the death of the administrative law judge or legal advisor.

2. In the event a person who has retired under the provisions of sections 287.812 to 287.855 dies, benefits, in the amount equal to fifty percent of the amount of the retirement benefits paid to the person under the provisions of sections 287.820 to287.830 shall be paid in monthly installments to his beneficiary.

3. In the event that a person dies who has served in this state for an aggregate of twelve years, continuously or otherwise, as an administrative law judge or legal advisor, or both of the divisions and who, after August 13, 1984, ceased or ceases to hold office by reason of the expiration of his term, voluntary resignation or removal by the governor for nondisciplinary reasons, but who has not retired under the provisions of sections 287.812 to 287.855, retirement compensation shall be paid in monthly installments to his beneficiary in the amount equal to fifty percent of the amount of retirement compensation provided in section 287.820. The benefits to the beneficiary provided herein shall commence immediately upon the death of the former administrative law judge or legal advisor.

4. In the event that any surviving spouse receiving benefits under the provisions of sections 287.812 to 287.855 dies leaving a surviving beneficiary as defined in section 287.812, the benefits received by such surviving spouse shall be paid to such surviving beneficiary during the remainder of the period of his eligibility. If such surviving spouse leaves more than one surviving beneficiary, then each beneficiary during the remainder of the period of his eligibility shall receive a pro rata share of the amount paid to the surviving spouse under the provisions of sections 287.812 to 287.855.

(L. 1984 H.B. 1106, A.L. 1987 H.B. 564)

Effective 8-31-87

Retirement with less than twelve years service--benefits.

287.830. Any administrative law judge or legal advisor who has served as such for less than twelve years and is otherwise qualified under sections 287.812 to 287.855 may elect to retire at age sixty-five, or thereafter, at a reduced retirement benefit in a sum equal to the proportion of the retirement benefit provided in section 287.820 that his period of service as an administrative law judge or legal advisor, or both, of the division bears to twelve years.

(L. 1984 H.B. 1106)

Removal from office bars benefits--intentional killing ofadministrative law judge or legal advisor bars survivor benefits,when.

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

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

(L. 1984 H.B. 1106, A.L. 1997 H.B. 356)

Practice of law after retirement--restrictions.

287.840. No person, other than a beneficiary, who is receiving retirement benefits under the provisions of sections 287.812 to287.855 shall engage in the practice of law or do law business unless that person complies with the provisions of sections 476.510and 476.565.

(L. 1984 H.B. 1106)

Administration of retirement system and funds.

287.845. 1. The board shall administer the provisions of sections 287.812 to 287.855 and shall have the same powers, duties, and obligations in regard to the funds and the system provided for in such sections as it has in regard to the Missouri state employees' retirement system. The system shall calculate the annuity for an administrative law judge or legal advisor, as defined in section 287.812 based on the law in effect at the time the administrative law judge's or legal advisor's employment was terminated.

2. The commissioner of administration, the state treasurer, and the secretary of the Missouri state employees' retirement system shall perform the same duties in regard to the retirement system established pursuant to the provisions of sections287.812 to 287.855 that are prescribed for such officers in sections 104.436 and 104.438 in regard to the Missouri state employees' retirement system. Funds so certified and transferred for the retirement system established pursuant to the provisions of sections 287.812 to 287.855 shall be deposited in a separate account of the Missouri state employees' retirement fund and shall be disbursed only for the purposes of sections 287.812 to 287.855.

3. As of April 26, 2005, the liabilities and assets of the administrative law judge's and legal advisor's retirement system shall be transferred and combined with the state employees' retirement system. The contribution rate certified by the board under section104.1066 for the

state employees' retirement system after April 26, 2005, shall include amounts necessary to cover the costs of the administrative law judge's and legal advisor's retirement system. This section and section 287.813 shall not affect the past, present, or future rights or benefits of administrative law judges and legal advisors participating in the administrative law judge's and legal advisor's retirement system prior to April 26, 2005, including their beneficiaries, spouses, or former spouses.

(L. 1984 H.B. 1106, A.L. 1997 H.B. 356, A.L. 2003 S.B. 248, et al., A.L. 2005 S.B. 202, et al.)

Effective 4-26-05

Retirement benefit plan exclusive, exception--transfer of funds fromother system.

287.846. 1. The retirement benefit plan established by the provisions of sections 287.812 to 287.855 shall be the only retirement benefit plan under which benefits shall be paid to persons based on services of administrative law judges or legal advisors covered under the provisions of sections 287.812 to 287.855.

2. Any contributions made by the state of Missouri or the division to any other retirement system on such administrative law judge's or legal advisor's behalf shall be transferred upon August 13, 1984, to the board to be kept in the separate account provided for in section 287.845.

3. The provisions of subsections 1 and 2 of this section shall not apply to benefits paid or contributions made under the Federal Old Age and Survivors' Insurance Act, as amended.

(L. 1984 H.B. 1106)

Life insurance benefits.

287.850. The board shall provide or contract for life insurance benefits under the provisions of section 104.515 for persons covered by sections 287.812 to 287.855 who, for the purpose of that section, shall be considered members of the Missouri state employees' retirement system with the amount of life insurance benefits based on the creditable service of the person as provided in section 104.515.

(L. 1984 H.B. 1106, A.L. 1992 H.B. 1574)

Disability benefits.

287.855. Any administrative law judge or legal advisor who, while so employed, becomes disabled so that he or she is totally incapable of performing any duties of his or her office shall be entitled to disability benefits as provided by the Missouri state employees' retirement system.

(L. 1984 H.B. 1106, A.L. 1995 H.B. 416, et al.)

Administrative law judges and legal advisors serving in Armed Forcesmay elect to purchase creditable prior service--contributions,payment period--surviving spouse may receive refund.

287.856. 1. Any administrative law judge or legal advisor as defined in section 287.812 who had performed active service in the United States Army, Air Force, Navy, Marine Corps, Army or Air National Guard, Coast Guard, or any reserve component thereof prior to becoming a member and who became a member after his discharge under honorable conditions may elect, prior to retirement, to purchase all of the member's creditable prior service equivalent to such service in the Armed Forces, but not to exceed four years. The purchase shall be effected by the member's submission of appropriate documentation verifying the member's dates of active service and by paying to the Missouri state employees' retirement system an amount equal to what would have been contributed by the state on the member's behalf had he been a member for the period for which the member is electing to purchase credit and had the member's compensation during such period of membership been the same as the annual salary rate at which the member was initially employed by a department, with the calculations based on the contribution rate in effect on the date of employment as an administrative law judge or legal advisor with simple interest at the same rate in effect at the time of election used by the Missouri state employees' retirement system calculated from the date of such employment from which the member could first receive creditable service to the date of election under this subsection. The payment shall be made over a period of not longer than two years, measured from the date of election, and with simple interest on the unpaid balance. Payments made for such creditable prior service under this section shall be treated by the Missouri state employees' retirement system as would contributions made by the state and shall not be subject to any prohibition on member contributions or refund provisions in effect August 28, 1992.

2. The surviving spouse of any deceased member who purchased creditable prior service for service in the Armed Forces of the United States pursuant to subsection 1 of this section and who died prior to retirement may, upon written request, receive a refund of the amount

contributed for such purchase of creditable prior service provided the surviving spouse is not entitled to a survivorship benefit payable under the provisions of section 104.420.

(L. 1992 S.B. 499, et al. § 287.860, A.L. 1997 H.B. 356)

Guaranty association, created, all self-insured to bemembers--powers--withdrawing member, duties.

287.860. 1. There is hereby created a not-for-profit corporation to be known as the "Missouri Private Sector Individual Self-Insurers Guaranty Corporation", hereinafter referred to as "the corporation" whose domicile and venue for service shall be Cole County, Missouri. Upon incorporation and adoption of bylaws, all individual self-insurers, as defined in section 287.280, other than individual public sector self-insurers and individual and public group self-insurers, as defined in section 287.280 and section537.620, shall be and remain members of the corporation as a condition of their authority to individually self-insure in this state. The corporation shall perform its functions under a plan of operation as established and approved in section 287.870 and shall exercise its powers and duties through a board of directors as established in section 287.862. The corporation shall have those powers granted or permitted general not-for-profit corporations, as provided for in chapter 355.

2. A member may voluntarily withdraw from the corporation when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of such termination. However, the withdrawing member shall continue to be bound by the provisions of sections 287.860 to 287.885 relating to the period of its membership and any claims charged pursuant thereto. The withdrawing member, who is or shall become a member on or after the incorporation, shall also be required to provide to the division of workers' compensation, hereinafter referred to as "the division" upon withdrawal, and at twelve-month intervals thereafter, satisfactory proof that it continues to meet the standards of section 287.280 or the rules promulgated by the division under chapter 287 in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member satisfies the division that there is no remaining value to claims incurred while the withdrawing member was self-insured. If, during this reporting period, the withdrawing member fails to meet the standards of section 287.280 or the rules promulgated by the division under chapter 287, the withdrawing member who is a member on or after the incorporation, may at six-month intervals or other agreed upon intervals thereafter be required by the division or by the corporation to provide to the division and to the corporation the certified opinion of an independent actuary who is a

member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the members for claims incurred while the member was a self-insurer. With each such opinion, the withdrawing member shall deposit with the division security in an amount equal to the value certified by the actuary and of a type that is acceptable for qualifying security deposits under section 287.280. The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The corporation has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the division. The corporation shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees and all costs pertaining thereto. For purposes of sections 287.860 to 287.885, the "successor of a withdrawing member" means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

(L. 1992 H.B. 975)

Board of directors, members, appointment, qualifications--directorto be member--terms, vacancies--expense reimbursement.

287.862. 1. The board of directors of the corporation shall consist of eight members, one of whom shall, on a permanent basis, be the director of the division, and such board shall be organized as is established in the plan of operation under section287.870.

2. With respect to initial appointments, the director of the division of workers' compensation shall act as a permanent member of the board, without voting authority, and shall appoint to the board initially seven additional persons, other than the director, who are qualified private sector self-insurers in this state required to be members of the corporation pursuant to the provisions of subsection 1 of section 287.860.

3. Two of such board members shall serve for two-year terms, ending no later than January 1, 1995, and three of such board members shall serve for three-year terms, ending no later than January 1, 1996, and two of such board members shall serve for terms of four years, ending no later than January 1, 1997. Thereafter, all future members of the board shall be

recommended for appointment to the board by members of the corporation in accordance with the procedures established in section 287.870 for the plan of operation for four-year terms, and shall serve as such members until their successors are appointed. Each member shall serve no longer than two consecutive terms in office.

4. Any vacancy in the office of any member of the board shall occur upon the member's resignation, death or conviction of a felony. The board, by majority vote, may also remove any member from office upon a finding of incompetence, neglect of duty or malfeasance in office. Within thirty days after the office of any member becomes vacant for any reason, the members of the board shall fill that vacancy for the unexpired term in the same manner as that in which appointments, other than initial appointments, are made.

5. The director and every member of the board shall receive no remuneration for such services but shall be reimbursed for any expenses incurred in carrying out the duties of the board on behalf of the corporation.

6. All other matters pertaining to the selection and tenure of office of any member of the board shall be set forth in the plan of operation and the applicable rules and regulations that may be hereinafter enacted.

(L. 1992 H.B. 975)

Moneys not deemed state moneys--use of funds--reports to director,when--additional powers of corporation--assessments, division shalllevy, amount--no dividends to be paid--bankruptcy, dissolution,or insolvency of self-insured member, procedure.

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

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

3. The board of directors of the corporation shall direct the investment of the moneys in the fund, and all returns on the investments shall be retained in the fund. The corporation shall,

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

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

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

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

6. The corporation may:

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

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

action at law or in equity to enforce any obligations, rights or duties as regards a workers' compensation self-insurer, the court may award reasonable attorney's fees and costs to the corporation;

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

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

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

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

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

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

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

7. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the division, upon certification of the board of directors, shall levy assessments based on the annual modified standard premium, provided that no such assessments shall ever exceed, in the aggregate, from all members, an amount in excess of one million dollars at any given time, exclusive of all new members' assessments in the amounts collected for same, as is set forth in the plan of operation pursuant to the provisions of section 287.870. Such assessments shall be made at a maximum annual assessment of one-sixth of one percent of the annual modified standard premium. The initial assessment shall be for an amount equal to six hundred thousand dollars, the amount of such fee to be levied over a three-year period, one-third of the six hundred thousand dollars to be collected and received the first year, one-third to be collected and received in the second year, and one-third to be collected and received in the third year, the first year to commence as of the date of incorporation, assessments to be prorated on an annualized basis. The director of the division shall annually certify to the corporation the assessment percentage due from the members of the corporation. The director of the division and the board of the corporation shall within the procedures as specified in this section and as established for the premium tax billings, as provided in sections287.690, 287.710, 287.715 and 287.730, notify, assess, and receive the assessments due from those members for the prior calendar year ending on the thirty-first day of December, with the exception that this annual assessment shall be payable in full on or before the first day of March directly to the corporation. The department of insurance, financial institutions and professional registration shall make available to the corporation or director of the division data on the self-insured employer's workers' compensation administrative tax data for use in verification of the assessment as provided in this section. If assessments provided in this section are not paid, the corporation shall certify the fact to the division. Out of the first amounts assessed, there shall be set aside an amount equal to fifty thousand dollars, which shall be applied retroactively, before August 28, 1992, to be used and applied for the benefit of employees who have open, outstanding claims, in existence, which have not already been fully and completely settled or for which there has been an award of judgment rendered, and for which there are moneys due and owing. The amount of payment and allocation of funds shall be within the exclusive discretion of the director, such payments to be made on a reasonably timely basis, as the director received funds

for such purpose. In addition, there shall be no reassessments against any member unless the director feels the current balance of the fund is insufficient or, after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the corporation, the amount held shall be less than four hundred thousand dollars, at which point the director shall raise assessments sufficient to bring the minimum amount of the fund back up to six hundred thousand dollars or such other amount not to exceed, in any event, one million dollars based upon a maximum annual assessment of one-sixth of one percent of the annual modified standard premium as shall be necessary to effectuate the purposes of the corporation at that time.

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

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

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

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

12. Income derived from the corporation assets and investments shall vest in the corporation and shall not inure, under any circumstances, to the benefit of any member, the

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

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

(L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 2005 S.B. 1 & 130)

Insolvency fund, created--purposes, audit of.

287.867. 1. Upon the adoption of a plan of operation, including, if applicable, the adoption of rules or regulations by the division of workers' compensation pursuant to section 287.870, there shall be created an "Insolvency Fund" to be managed by the corporation.

2. The insolvency fund is created for purposes of meeting the obligations of insolvent members incurred while members of the corporation and after the exhaustion of all assets including any bonds, escrow deposits, insurance or reinsurance, as required under this chapter. A method of operation of the insolvency fund shall be defined in the plan of operation as provided in section287.870 or applicable rules and regulations pertaining to it.

3. The division shall have the authority to audit the financial soundness of the insolvency fund annually.

4. The division may recommend certain amendments to the plan of operation to the board of directors of the corporation for purposes of assuring the ongoing financial soundness of the insolvency fund and its ability to meet the obligations of sections287.860 to 287.885.

5. An actuary on behalf of the division or other appropriate division personnel may make recommendations, from time to time, to improve the orderly payment of claims.

(L. 1992 H.B. 975)

Plan of operation, submitted to division, when--purpose,contents--effective, when.

287.870. 1. By January 1, l993, or at such other date as is agreed upon between the board and the director, the board of directors shall submit to the division of workers' compensation a proposed plan of operation for the administration of the corporation and the insolvency fund.

2. The purpose of the plan of operation shall be to provide the corporation and the board of directors with the authority and responsibility to establish the necessary programs and to take the necessary actions to protect against the insolvency of a member of the corporation. In addition, the plan shall provide that the members of the corporation shall be responsible for maintaining an adequate insolvency fund to meet the obligations of insolvent members provided for in sections 287.860 to287.885 and shall authorize the board of directors to contract and employ those persons with the necessary expertise to carry out this stated purpose.

3. The plan of operation, and any amendments thereto, shall take effect upon submission in writing to the director. If the board of directors fails to submit a plan by six months after August 28, 1992, or fails to make required amendments to the plan within thirty days, or such other date as the parties shall agree upon, thereafter, the division shall promulgate such rules as are necessary to effectuate the provisions of this section. Such rules shall continue in force until modified by the division or superseded by a plan submitted by the board of directors to the director.

4. All member employers shall comply with the plan of operation.

5. The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the corporation under section 287.865 will be performed;

(2) Establish procedures for handling assets of the corporation;

(3) Establish the amount and method of reimbursing members of the board of directors under section 287.862;

(4) Establish procedures by which claims may be filed with the corporation and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of an insolvent employer shall be deemed notice to the corporation or its agent, and a list of such claims shall be submitted periodically to the corporation by the receiver or liquidator;

(5) Establish regular places and times for meetings of the board of directors;

(6) Establish procedures for records to be kept of all financial transactions of the corporation and its agents and the board of directors;

(7) Provide that any member employer aggrieved by any final action or decision of the corporation may appeal to the division within thirty days after the action or decision;

(8) Provide notice to any member employer aggrieved by any final action or decision of the division of workers' compensation of its rights to appeal such action or decision;

(9) Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the division;

(10) Promulgate any additional provisions or any additional procedures or regulations necessary or proper for the execution of any of the powers and duties of the corporation or of the division of workers' compensation, without prior formal hearing or notices, by either the corporation on its own motion, or by the division of workers' compensation by regulations implementing sections287.860 to 287.885;

(11) Establish procedures to ensure the cooperation of the board with the director and any of the employees of the division of workers' compensation whenever possible.

(L. 1992 H.B. 975)

Powers and duties of division.

287.872. 1. The division shall:

(1) Notify the corporation of the existence of an insolvent employer within a reasonable period of time, but not later, in any event, than ten working days after it receives notice of the determination of insolvency;

(2) Upon request of the board of directors, provide the corporation with a statement of the annual modified standard premiums of each member employer;

(3) Set up procedures to ensure the cooperation of the director and employees of the division with the board and individual self-insurers acting under this section wherever possible.

2. The division may:

(1) Require that the corporation notify the member employers and any other interested parties of the determination of insolvency and of their rights under

sections 287.860 to 287.885. Such notification shall be by mail to the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in accordance with the applicable law pertaining to same shall be sufficient;

(2) Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this state. As an alternative, the division may levy a penalty on any member employer failing to pay an assessment when due. Such penalty shall not exceed five percent of the unpaid assessment per month;

(3) Revoke the designation of any servicing facility, including third-party administrators, if the division, in consultation and agreement with the corporation, finds that claims are being handled in an unsatisfactory manner.

(L. 1992 H.B. 975)

Assignment of recovery rights to corporation, when--receiver orliquidator, rights--corporation to file statements with receiver,when.

287.875. 1. Any person who recovers from the corporation under sections 287.860 to 287.885 shall be deemed to have assigned her or his rights to the corporation to the extent of such recovery. Every claimant seeking the protection of sections287.860 to 287.885 shall cooperate with the corporation to the same extent as such person would have been required to cooperate with the insolvent member employer. The corporation shall have no cause of action against the employee of the insolvent member employer for any sums the corporation has paid out, except such causes of action as the insolvent member employer would have had if such sums had been paid by the insolvent member employer. In the case of an insolvent member employer operating on a plan with assessment liability, payments of claims by the corporation shall not operate to reduce the liability of the insolvent member employer to the receiver, liquidator, or statutory successor for unpaid assessments.

2. The receiver, liquidator, or statutory successor of an insolvent member employer shall be bound by settlements of covered claims by the corporation. The court having jurisdiction shall grant such claims priority against the assets of the insolvent member employer equal to that to which the claimant would have been entitled in the absence of

sections 287.860 to 287.885. The expense of the corporation or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

3. The corporation shall file periodically with the receiver or liquidator of the insolvent member employer statements of the covered claims paid by the corporation and estimates of anticipated claims on the corporation, which shall preserve the rights of the corporation against the assets of the insolvent member employer.

(L. 1992 H.B. 975)

Insolvent member, board may determine, how--notice to division, when.

287.877. 1. Upon determination by majority vote that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the division of workers' compensation of any information indicating such condition.

2. The board of directors may, upon majority vote, request that the division determine the condition of any member employer which the board in good faith believes may no longer be qualified to be a member of the corporation. Within thirty days of the receipt of such request or, for good cause shown, within a reasonable time thereafter, the division shall make such determination and shall forthwith advise the board of its findings. Each request for a determination shall be kept on file by the division, but the request shall not be open to public inspection prior to the release of the determination to the public.

3. It shall also be the duty of the division to report to the board of directors when it has reasonable cause to believe that a member employer may be in such a financial condition as to be no longer qualified to be a member of the corporation.

4. The board of directors may, upon majority vote, make reports and recommendations to the division upon any matter which is germane to the solvency, liquidation, rehabilitation, or conservation of any member employer. Such reports and recommendations shall not be considered public documents.

5. The board of directors may, upon majority vote, make recommendations to the division for the detection and prevention of employer insolvencies.

6. The board of directors shall, at the conclusion of any member employer's insolvency in which the corporation was obligated to pay covered claims, prepare a report on the history and

cause of such insolvency, based on the information available to the corporation, and shall submit such report to the division.

7. Both the board and the division shall, under the plan of operation, pursuant to section 287.870, and any applicable rules and regulations, establish further recommendations as the occasion suggests.

(L. 1992 H.B. 975)

Liability, limitation of.

287.880. There shall be no liability on the part of, and no cause of action of any nature shall lie, whether at law or in equity, against, any member employer, the guaranty corporation or its agents or employees, the board of directors, or the division of workers' compensation, or any of its employees or representatives, on account of any action or inaction taken by any of them in the administration of this workers' compensation self-insurer's guaranty fund, or in the performance of their powers and duties under sections 287.860 to 287.885.

(L. 1992 H.B. 975)

Automatic stay of proceedings, when, duration.

287.882. All proceedings in which an insolvent employer is a party, or is obligated to defend a party, in any court or before any quasi-judicial body or administrative board in this state shall be stayed for up to three months, or for such additional period from the date of an order of liquidation against the member employer with a finding of insolvency, entered by a court of competent jurisdiction or from the date the board of directors of the guaranty corporation determines that the member employer has fully expended all surety bonds, reinsurance, and all other available assets, and is not able to pay compensation benefits, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the corporation of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member employer. The corporation, either on its own behalf or on behalf of the insolvent member employer, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. If requested by the corporation, the stay of proceedings may be shortened or waived.

(L. 1992 H.B. 975)

Limitations on actions.

287.885. Notwithstanding any other provision of this chapter, if a covered claim, as defined herein, for which settlement is not effected and for which suit is not instituted against the insured or the corporation within the time period provided in sections287.430 and 287.440, suit on such claim shall be barred.

(L. 1992 H.B. 975)

Severability clause.

287.886. If any provisions of sections 287.860 to 287.886 or the application thereof to any person or circumstances are* held invalid, such validity shall not affect other provisions or applications of this section which can be given effect without the invalid provisions or application, and to this end the provisions of this section are declared to be severable.

(L. 1992 H.B. 975)

*Word "are" does not appear in original rolls.

Workers' compensation insurers to report cost data to department.

287.892. All workers' compensation insurers or their designated agents, self-insurers and state agencies responsible for the collection or maintenance of workers' compensation related data shall report claims information necessary to determine and analyze costs of the workers' compensation system to the director of the department of insurance, financial institutions and professional registration or to such agents as the director may designate. The director may promulgate all reasonable rules and regulations necessary to implement this section.

(L. 1993 S.B. 251 § 12)

Insurers to report medical claims data to division of workers'compensation, contents--consolidated health plan,duties--purpose--costs--penalty for failure to comply.

287.894. 1. All commercial insurance carriers licensed to sell workers' compensation insurance in the state shall provide to the Missouri division of workers' compensation at least every six months workers' compensation medical claims history data as required by the division. Such data shall be on electronic media and shall include the current procedural and medical terminology codes relating to the medical treatment, dates of treatment, demographic characteristics of the worker, type of health care provider rendering care, and charges for treatment. The division may require a statistically valid sample of claims. Companies failing to

provide such information as required by the division are subject to section 287.740. The division may, for purposes of verification, collect data from health care providers relating to the treatment of workers' compensation injuries.

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

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

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

(L. 1993 S.B. 251 § 13, A.L. 2005 S.B. 1 & 130)

Residual market, department to develop plan--insurers to participate,rates, procedures--duties of director.

287.896. 1. Within forty-five days of August 28, 1993, the director of the department of insurance, financial institutions and professional registration shall approve a plan of operation for a new residual market that will guarantee insurance coverage and quality loss prevention and control services for employers seeking coverage through the plan. The new residual market shall begin operation January 1, 1994.

2. All insurers authorized to write workers' compensation and employers' liability insurance shall participate in such plan providing for the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods, except that all employers that have expiring annual premiums greater than two hundred fifty thousand dollars must negotiate a retrospective rating plan with their insurer that is acceptable to the director of the department of insurance, financial institutions and professional registration. The rates,

supplementary rate information and policy forms to be used in such a plan and any future modification thereof must be submitted to the director for approval at least seventy-five days prior to their effective date. Such rates shall be set by the director after hearing so that the amount required in premiums, together with reasonable investment income earned on those premiums, is not excessive, inadequate or unfairly discriminatory and is actuarially sufficient to apply claims and losses and reasonable operating expenses of the insurers. Nothing contained herein shall prevent the director from including a merit rating plan for nonexperienced rated employers within the residual market plan. The director shall adopt within the plan a system to distribute any residual market deficit through an assessment on insurance carriers authorized to write workers' compensation insurance in proportion to the respective share of voluntary market premium written by such carrier.

3. The director shall disapprove any filing that does not meet the requirements of this section. A filing shall be deemed to meet such requirements unless approved, disapproved or modified by the director within seventy-five days after the filing is made. In disapproving a filing made pursuant to this section, the director shall have the same authority and follow the same procedures as in disapproving a rate filing pursuant to the requirements for filings in the voluntary market. The designated advisory organization may make and file the plan of operation, rates, rating plans, rules and policy forms under this section.

4. The director shall establish by rule standards to assure that any employer insured through the plan shall receive the same quality of service in the areas of employee classification, safety engineering, loss control, claims handling and claim reserving practices as do employers which are voluntarily insured as provided in section 287.123. The standards established by the director pursuant to this subsection shall also specify the procedures and grounds under which an employer insured through the plan shall be assigned an insurer, and the method by which such employers shall be informed of such procedures and grounds. All insurers of the residual market shall process applications, conduct safety engineering or other loss control services and provide claims handling within the state of Missouri or adjoining states.

(L. 1993 S.B. 251 § 14)

Citation of law--definitions.

287.900. 1. Sections 287.900 to 287.920 shall be known as the "Missouri Employers Mutual Insurance Company Act".

2. As used in sections 287.900 to 287.920, the following words mean:

(1) "Administrator", the chief executive officer of the Missouri employers mutual insurance company;

(2) "Board", the board of directors of the Missouri employers mutual insurance company;

(3) "Company", the Missouri employers mutual insurance company created in section 287.902.

(L. 1993 S.B. 251 § 1)

Missouri employers mutual insurance company, created, powers, purpose.

287.902. The "Missouri Employers Mutual Insurance Company" is created as an independent public corporation for the purpose of insuring Missouri employers against liability for workers' compensation, occupational disease and employers' liability coverage. The company shall be organized and operated as a domestic mutual insurance company and it shall not be a state agency. The company shall have the powers granted a general not-for-profit corporation pursuant to section 355.090 to the extent the provisions of such section do not conflict with the provisions of sections 287.900 to 287.920. The company shall be a member of the Missouri property and casualty guaranty association, sections 375.771 to 375.779, and as such will be subject to assessments therefrom, and the members of such association shall bear responsibility in the event of the insolvency of the company. The company shall be established pursuant to the provisions of sections 287.900 to 287.920. Preference shall be given to Missouri employers that develop an annual premium of not greater than ten thousand dollars. The company shall use flexibility and experimentation in the development of types of policies and coverages offered to employers, subject to the approval of the director of the department of insurance, financial institutions and professional registration.

(L. 1993 S.B. 251 § 2)

Board, created--members, appointment, qualifications, terms--chairman.

287.905. 1. There is created a board of directors for the company. The board shall be appointed by January 1, 1994, and shall consist of five members appointed or selected as provided in this section. The governor shall appoint the initial five members of the board with the advice and consent of the senate. Each director shall serve a five-year term. Terms shall be staggered so that no more than one director's term expires each year on the first day of July.

The five directors initially appointed by the governor shall determine their initial terms by lot. At the expiration of the term of any member of the board, the company's policyholders shall elect a new director in accordance with provisions determined by the board.

2. Any person may be a director who:

(1) Does not have any interest as a stockholder, employee, attorney, agent, broker or contractor of an insurance entity who writes workers' compensation insurance or whose affiliates write workers' compensation insurance; and

(2) Is of good moral character and who has never pleaded guilty to, or been found guilty of, a felony.

3. The board shall annually elect a chairman and any other officers it deems necessary for the performance of its duties. Board committees and subcommittees may also be formed.

(L. 1993 S.B. 251 § 3)

Administrator, hiring of, qualifications, compensation--powers ofboard, generally.

287.907. 1. By March 1, 1994, the board shall hire an administrator who shall serve at the pleasure of the board and the company shall be fully prepared to be operational by March 1, 1995, and assume its responsibilities pursuant to sections 287.900to 287.920. The administrator shall receive compensation as established by the board and must have proven successful experience as an executive at the general management level in the insurance business.

2. The board is vested with full power, authority and jurisdiction over the company. The board may perform all acts necessary or convenient in the administration of the company or in connection with the insurance business to be carried on by the company. In this regard, the board is empowered to function in all aspects as a governing body of a private insurance carrier.

(L. 1993 S.B. 251 § 4)

Administrator, duties of, bond required--immunity from liability,board and employees.

287.909. 1. The administrator of the company shall act as the company's chief executive officer. The administrator shall be in charge of the day-to-day operations and management of the company.

2. Before entering the duties of office, the administrator shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the company.

3. The administrator or his designee shall be the custodian of the moneys of the company and all premiums, deposits or other moneys paid thereto shall be deposited with a financial institution as designated by the administrator.

4. No board member, officer or employee of the company is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management or conduct of the company or affairs relating to it.

(L. 1993 S.B. 251 § 5)

Rates, board to determine, how.

287.910. The board shall have full power and authority to establish rates to be charged by the company for insurance. The board shall contract for the services of or hire an independent actuary, a member in good standing with the American Academy of Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable expenses of conducting the business of the company and maintain a reasonable surplus. The company shall conduct a workers' compensation program that shall be neither more nor less than self-supporting.

(L. 1993 S.B. 251 § 6)

Investment policy, board to determine--administrator to makeinvestments, how.

287.912. The board shall formulate and adopt an investment policy and supervise the investment activities of the company. The administrator may invest and reinvest the surplus or reserves of the company subject to the limitations imposed on domestic insurance companies by state law. The company may retain an independent investment counsel. The board shall periodically review and appraise the investment strategy being followed and the effectiveness of such services. Any investment counsel retained or hired shall periodically report to the board on investment results and related matters.

(L. 1993 S.B. 251 § 7)

Agents may sell policies, commissions.

287.915. Any insurance agent or broker licensed to sell workers' compensation insurance in this state shall be authorized to sell insurance policies for the company in compliance with the bylaws adopted by the company. The board shall establish a schedule of commissions to pay for the services of the agent.

(L. 1993 S.B. 251 § 8)

Workplace safety program, administrator to formulate--safety plan,contents--rates may be reduced, when.

287.917. 1. The administrator shall formulate, implement and monitor a workplace safety program for all policyholders.

2. The company shall have representatives whose sole purpose is to develop, with policyholders, a written workplace accident and injury reduction plan that promotes safe working conditions and which is based upon clearly stated goals and objectives. Company representatives shall have reasonable access to the premises of any policyholder or applicant during regular working hours. The company shall communicate the importance of a well-defined safety plan and assist in any way to obtain this objective.

3. The administrator or board may refuse to insure, or may terminate the insurance of any subscriber who refuses to permit on-site examinations or disregards the workplace accident and injury reduction plan.

4. Upon the completion of a detailed inspection and recognition of a high regard for employee work safety, a deviation may be applied to the rate structure of that insured noting special recognition of those efforts.

(L. 1993 S.B. 251 § 9)

Company not to receive state appropriation, exception--revenue bonds,authorization, terms, execution, procedures.

287.919. 1. The Missouri employers mutual insurance company shall not receive any state appropriation, directly or indirectly, except as provided in section 287.690.

2. In order to provide funds for the creation, continued development and operation of the company, the board is authorized to issue revenue bonds from time to time, in a principal

amount outstanding not to exceed forty million dollars at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

3. The board may issue bonds to refund other bonds issued pursuant to this section.

4. The bonds shall have a maturity of no more than ten years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds, except that no bonds may be redeemed prior to maturity unless the company has established adequate reserves for the risks it has insured.

5. The bonds shall be executed with the manual or facsimile signature of the administrator or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the company.

6. The proceeds of the bonds and the earnings on those proceeds shall be used by the board for the development and operation of the Missouri employers mutual insurance company, to pay expenses incurred in the preparation, issuance and sale of the bonds and to pay any obligations relating to the bonds and the proceeds of the bonds under the United States Internal Revenue Code of 1986, as amended.

7. The bonds may be sold at a public sale or a private sale. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the administrator or the company.

8. This section is full authority for the issuance and sale of the bonds and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

9. An amount of money from the sources specified in subsection 2 of this section sufficient to pay the principal of and any interest on the bonds as they become due each year shall be set aside and is hereby pledged for the payment of the principal and interest on the bonds.

10. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

11. The bonds shall be payable by the company, which shall keep a complete record relating to the payment of the bonds.

12. Not more than fifty percent of the bonds sold shall be sold to public entities.

(L. 1993 S.B. 251 § 10)

Audit required, when, procedure--report, contents, governor andgeneral assembly to receive--administrator to formulatebudget--department, duties--subscribers to be provided policy,when.

287.920. 1. The board shall cause an annual audit of the books of accounts, funds and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be charged against the company. A copy of the audit report shall be filed with the director of the department of insurance, financial institutions and professional registration and the administrator. The audit shall be open to the public for inspection.

2. The board shall submit an annual independently audited report in accordance with procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business done by the company during the previous year and contain a statement of the resources and liabilities of the company.

3. The administrator shall annually submit to the board for its approval an estimated budget of the entire expense of administering the company for the succeeding calendar year having due regard to the business interests and contract obligations of the company.

4. The incurred loss experience and expense of the company shall be ascertained each year to include but not be limited to estimates of outstanding liabilities for claims reported to the company but not yet paid and liabilities for claims arising from injuries which have occurred but have not yet been reported to the company. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared or a credit allowed to an employer who has been insured with the company in accordance with criteria approved by the board, which may account for the employer's safety record and performance.

5. The department of insurance, financial institutions and professional registration shall conduct an examination of the company in the manner and under the conditions provided by the statutes of the insurance code for the examination of insurance carriers. The board shall pay the cost of the examination as an expense of the company. The company is subject to all provisions of the statutes which relate to private insurance carriers and to the jurisdiction of

the department of insurance, financial institutions and professional registration in the same manner as private insurance carriers, except as provided by the director.

6. For the purpose of ascertaining the correctness of the amount of payroll reported, the number of employees on the employer's payroll and for such other information as the administrator may require in the proper administration of the company, the records and payrolls of each employer insured by the company shall always be open to inspection by the administrator or his duly authorized agent or representative.

7. Every employer provided insurance coverage by the company, upon complying with the underwriting standards adopted by the company, and upon completing the application form prescribed by the company, shall be furnished with a policy showing the date on which the insurance becomes effective.

(L. 1993 S.B. 251 § 11)

Definitions.

287.930. As used in sections 287.930 to 287.975, the following terms mean:

(1) "Accepted actuarial standards", the standards adopted by the Casualty Actuarial Society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking, and the Standards of Practice adopted by the Actuarial Standards Board;

(2) "Advisory organization", any entity which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and which assists insurers in ratemaking related activities. Two or more insurers which have a common ownership or operate in this state under common management or control constitute a single insurer for the purpose of this definition. "Advisory organization" does not include a joint underwriting association, any actuarial or legal consultant, any employee of an insurer or insurers under common control or management or their employees or manager;

(3) "Classification system" or "classification", the plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders;

(4) "Competitive market", a market which has not been found to be noncompetitive pursuant to section 287.942;

(5) "Director", the director of the department of insurance, financial institutions and professional registration;

(6) "Expenses", that portion of any rate attributable to acquisition and field supervision; collection expenses and general expenses; and taxes, licenses and fees;

(7) "Experience rating", a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification;

(8) "Loss trending", any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective;

(9) "Market", the interaction between buyers and sellers of workers' compensation insurance within this state pursuant to the provisions of sections 287.930 to 287.975;

(10) "Noncompetitive market", a market for which there is a ruling in effect pursuant to section 287.942 that a reasonable degree of competition does not exist;

(11) "Prospective loss costs", that portion of a rate that does not include provisions for expenses, other than loss adjustment expenses, or profit. "Prospective loss costs" are developed losses projected through loss trending to a future point in time, including any assessments that are loss-based, and ascertained by accepted actuarial standards;

(12) "Pure premium rate", that portion of the rate which represents the loss cost per unit of exposure including loss adjustments expense;

(13) "Rate", the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums;

(14) "Residual market", the plan, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods;

(15) "Statistical plan", the plan, system or arrangement used in collecting data;

(16) "Supplementary rate information", any manual or plan of rates, classifications system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured;

(17) "Supporting information", the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates and any other similar information required to be filed by the director.

(L. 1993 S.B. 251 § 17)

Effective 1-1-94

Act not applicable, when--unfair trade practices, when.

287.932. 1. Nothing in sections 287.930 to 287.975 prohibits or regulates the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, but in the payment of such dividends there shall be no unfair discrimination between policyholders.

2. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be considered a rating plan or system.

3. It shall be an unfair trade practice pursuant to sections 375.934 and 375.936 to make the payment of a dividend or any portion thereof conditioned upon renewal of the policy or contract.

(L. 1993 S.B. 251 § 18)

Effective 1-1-94

Insurer and advisory organization not to make agreement restrainingtrade--insurer must use uniform experience rating plan--exceptions.

287.935. 1. No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization or other person which has the purpose or effect or restraining trade unreasonably or of substantially lessening competition in the business of insurance.

2. No insurer shall agree with any other insurer or with the advisory organization to adhere to or use any rate, rating plan, other than the uniform experience rating plan, or rating rule except as needed to comply with the requirements of section 287.955.

3. The fact that two or more insurers, whether or not members or subscribers of the advisory organization, use consistently or intermittently, the same rates, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

4. Two or more insurers which have a common ownership or operate in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in sections287.930 to 287.975 as if they constituted a single insurer.

(L. 1993 S.B. 251 § 19)

Effective 1-1-94

Director may conduct examinations--insurer and advisory organizationsto maintain records, purpose--cost of examination--outstateexamination may be accepted.

287.937. 1. The director may examine any insurer and the advisory organization as deemed necessary to ascertain compliance with sections 287.930 to 287.975.

2. Every insurer and the advisory organization shall maintain reasonable records of the type and kind reasonably adapted to its method of operation containing its experiences or the experience of its members including the data, statistics or information collected or used by it in its activities. These records shall be available at all reasonable times to enable the director to determine whether the activities of the advisory organization, insurer or association comply with the provisions of sections 287.930 to287.975. Such records shall be maintained in an office within this state or shall be made available to the director for examination or inspection at any time upon reasonable notice.

3. The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation of a detailed account of such costs.

4. In lieu of any such examination the director may accept the report of an examination by the insurance supervisory official of another state, made pursuant to the laws of such state.

(L. 1993 S.B. 251 § 20)

Effective 1-1-94

Penalties for violations, director may impose--each day a separateviolation, when--license may be suspended or revoked, when.

287.940. 1. The director may, upon a finding that any person or organization has violated any provision of sections 287.930 to287.975, impose a penalty of not more than one thousand dollars for each such violation, but if the director finds such violation to be willful, a penalty of not more than ten thousand dollars for each such violation may be imposed. Such penalties may be in addition to any other penalty provided by law.

2. For purposes of this section, any insurer using a rate for which the insurer has failed to file the rate, supplementary rate information or supporting information, as required by sections 287.930 to 287.975, shall have committed a separate violation for each day such failure continues.

3. The director may suspend or revoke the license of any advisory organization or insurer which fails to comply with an order of the director within the time limit specified by such order, or any extension thereof which the director may grant.

4. The director may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by the director, unless the director modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

5. No penalty shall be imposed and no license shall be suspended or revoked except on a written order of the director, stating the findings made after hearing.

(L. 1993 S.B. 251 § 21)

Effective 1-1-94

Competitive market presumed to exist, when--reasonable degree ofcompetition, factors.

287.942. 1. A competitive market is presumed to exist unless the director, after hearing, determines that a reasonable degree of competition does not exist in the market and the director issues an order to that effect. Such an order shall expire no later than one year after issue. In determining whether a reasonable degree of competition exists, the director may consider relevant tests of workable competition pertaining to market structure, market

performance and market conduct. For the purposes of this section, "market" shall mean the statewide workers' compensation and employers' liability lines of business.

2. In determining whether a reasonable degree of competition exists, the following factors shall be considered:

(1) Generally accepted and relevant tests of competition pertaining to market structure, market performance and market conduct;

(2) Market concentration as measured by the Herfindahl-Herschman Index;

(3) The number of insurers transacting workers' compensation insurance in the market;

(4) Insurer market shares and changes in market shares;

(5) Ease of entry into the market;

(6) Whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured; and

(7) Whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk.

(L. 1993 S.B. 251 § 22)

Effective 1-1-94

Director to monitor degree of competition, purpose.

287.945. In determining whether or not a competitive market exists pursuant to section 287.942, the director shall monitor the degree of competition in this state. In doing so, the director shall use existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the department of insurance, financial institutions and professional registration, in cooperation with other state insurance departments, through outside contractors or in any other appropriate manner.

(L. 1993 S.B. 251 § 23)

Effective 1-1-94

Insurers to file rate information in competitive market with thedirector, purpose--noncompetitive market, information filed--form offiling--public inspection.

287.947. 1. In a competitive market, every insurer shall file with the director all rates and supplementary rate information which is to be used in this state, except as provided in section 287.955. Such rates and supplementary rate information shall be filed not later than thirty days after the effective date. If the director finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the director at least thirty days before the effective date, all such rates and such supplementary rate information and supporting information as prescribed by the director. Upon application by the filer, the director may authorize an earlier effective date.

2. In a noncompetitive market every insurer shall file with the director all rates and supplementary rate information which is to be used in this state, except as provided in section 287.942. Such rates and supplementary rate information and supporting information required by the director shall be filed at least thirty days before the effective date. Upon application by the filer, the director may authorize an earlier effective date.

3. Rates filed pursuant to this section shall be filed in such form and manner as prescribed by the director. In a noncompetitive market, whenever a filing is not accompanied by such information as the director has required under this section, the director shall so inform the insurer within fifteen days and the filing shall not be deemed to be made until the information is furnished or the insurer certifies that the additional information is not maintained or cannot be provided.

4. All rates, supplementary rate information and any supporting information for risks filed under sections 287.930 to 287.975shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(L. 1993 S.B. 251 § 24)

Effective 1-1-94

Competitive market, rates not to be excessive, inadequate, unfairlydiscriminatory.

287.950. 1. Rates in a competitive market shall not be excessive, inadequate or unfairly discriminatory. Rates are excessive if it is likely to produce a long-run profit that is unreasonably

high for the insurance provided or if expenses are unreasonably high in relation to services rendered. Rates are not inadequate unless clearly insufficient to sustain projected losses and expenses and the use of such rates, if continued, will tend to create a monopoly in the market. A rate is inadequate if funds equal to the full ultimate cost of anticipated losses and loss adjustment expenses are not produced when the prospective loss costs are applied to anticipated payrolls.

2. Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

(L. 1993 S.B. 251 § 25)

Effective 1-1-94

Rate standards in noncompetitive market, factors.

287.952. In determining whether rates comply with the excessiveness standard in a noncompetitive market, the inadequacy standard and the unfair discrimination standard, the following criteria shall apply:

(1) Due consideration may be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, to loadings for leveling premium rates over time, for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors, including judgment;

(2) The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience;

(3) The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and the reserves associated with those premiums.

(L. 1993 S.B. 251 § 26)

Effective 1-1-94

Insurers to adhere to uniform classification system, plan--director todesignate advisory organization, purpose, duties--risk premiummodification plan, requirements.

287.955. 1. Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan filed with the director by the advisory organization designated by the director and subject to his disapproval.

2. An insurer may develop subclassifications of the uniform classification system upon which a rate may be made, except that such subclassifications shall be filed with the director thirty days prior to their use. The director shall disapprove subclassifications if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan and classification system.

3. The director shall designate an advisory organization to assist him in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the director.

4. The designated advisory organization shall develop and file manual rules, subject to the approval of the director, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.

5. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business. No insurer shall agree with any other insurer or with the advisory organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system of the uniform statistical plan.

6. (1) A workers' compensation insurer may develop an individual risk premium modification rating plan which prospectively modifies premium based upon individual risk characteristics which are predictive of future loss. Such rating plan shall be filed thirty days prior to use and may be subject to disapproval by the director.

(2) The rating plan shall establish objective standards for measuring variations in individual risks for hazards or expense or both. The rating plan shall be actuarially justified and shall not result in premiums which are excessive, inadequate, or unfairly discriminatory. The rating plan

shall not utilize factors which are duplicative of factors otherwise utilized in the development of rates or premiums, including the uniform classification system and the uniform experience rating plan. The premium modification factors utilized under the rating plan shall be applied on a statewide basis, with no premium modifications based solely upon the geographic location of the employer.

(3) Within thirty days of a request, the insurer shall clearly disclose to the employer the individual risk characteristics which result in premium modifications. However, this disclosure shall not in any way require the release to the insured employer of any trade secret or proprietary information or data used to derive the premium modification and that meets the definitions of, and is protected by, the provisions of chapter 417.

(4) (a) Premium modifications under this subsection may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly situated employers.

(b) Premium modifications resulting from a schedule rating plan, with an underwriter determining individual risk characteristics, shall be limited to plus or minus twenty-five percent. An additional ten percent credit may be given for a reduction in the insurer's expenses.

(c) Premium modifications resulting from a risk modeling system shall be limited to plus or minus fifty percent. Premium modifications resulting from a risk modeling system shall be reported separately under the uniform statistical plan from premium modifications resulting from a schedule rating plan.

(d) Premium credits or reductions shall not be removed or reduced unless there is a change in the insurer, the insurer amends or withdraws the rating plan, or unless there is a corresponding change in the insured employer's operations or risk characteristics underlying the credit or reduction.

(L. 1993 S.B. 251 § 27, A.L. 2013 S.B. 1)

Effective 1-01-14

Experience rating plan, contents.

287.957. The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed one thousand dollars and the employer pays all of the total medical costs and there is no lost time from the employment, other than the first three days or less of disability under subsection 1 of section 287.160, and no claim is filed. An employer opting to utilize this provision maintains an obligation to report the injury under subsection 1 of section287.380.

(L. 1993 S.B. 251 § 28, A.L. 2005 S.B. 1 & 130)

Disapproval of rate, when, how--procedures, director's powers--effect.

287.960. 1. A rate may be disapproved at any time subsequent to the effective date. A rate subject to prefiling under section287.947 may also be disapproved before the effective date. A rate for a residual market in which insurers are mandated by law to participate shall not become effective until approved by the director, as provided in section 287.896.

2. The director may disapprove a rate for use in a competitive market if the director finds that the rate is inadequate or unfairly discriminatory under section 287.950. The director shall disapprove a rate for use in a noncompetitive market if he finds that the rate is excessive, inadequate or unfairly discriminatory under section 287.950.

3. If the director finds that a reasonable degree of competition does not exist in a market in accordance with section 287.942, the director may require that the insurers in that market file supporting information in support of existing rates. If the director believes that such rates may violate any of the requirements of sections 287.930 to 287.975, a hearing shall be called prior to any disapproval.

4. If the director believes that rates in a competitive market violate the inadequacy or unfair discrimination standard in section287.950 or any other applicable requirement of this act*, the director may require that the insurers in that market file supporting information in support of existing rates. If after reviewing the supporting rate information, the director continues to believe that the rates may violate these requirements, a hearing shall be called prior to any disapproval.

5. The director may disapprove, without hearing, rates prefiled pursuant to section 287.947 that have not become effective; however, the insurer whose rates have been disapproved shall be given a hearing upon a written request made within thirty days after the disapproval order.

6. If the director disapproves a rate, the director shall issue an order specifying in what respects it fails to meet the requirements of sections 287.930 to 287.975 and stating when, within a reasonable period thereafter, such rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued subject to the requirements of section 287.962. Such order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on such date.

7. Whenever an insurer has no legally effective rates as a result of the director's disapproval of rates or other act, the director shall on request of the insurer specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him. When new rates become legally effective, the director shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than ten dollars per policyholder shall not be required.

(L. 1993 S.B. 251 § 29)

Effective 1-1-94

*"This act" (S.B. 251, 1993) contains numerous sections. Consult Disposition of Sections table for definitive listing.

Hearings, when, conduct of--findings made, when--right to judicialdetermination.

287.962. 1. Any hearing under this section shall be held at a place designated by the director and upon not less than thirty days' written notice to the insurer or the advisory organization. A full stenographic record shall be prepared for any hearing held pursuant to this

section. The hearing may be conducted by a hearing officer designated by the director. All orders and determinations shall be based on findings of fact and conclusions of law.

2. The director shall make written findings and conclusions and shall set them forth in an order issued within twenty days of the close of the record. A hearing under this section shall not be adjourned or recessed except upon application of an insurer or the advisory organization. An application to adjourn or recess shall be for extraordinary circumstances and not for the purpose of delay. The grounds for any adjournment or recess of a hearing conducted pursuant to this section shall be specifically stated in the record.

3. Any insurer or the advisory organization may obtain a judicial declaration as to the validity of any order by bringing an action for declaratory relief. The right to judicial determination shall not be affected by the failure to seek reconsideration of the order. The order may be declared invalid for failure to comply with the provisions of sections 287.930 to 287.975. The review of any such order shall be on the basis of the record of the proceedings before the director and shall be affirmed if supported by competent and substantial evidence upon the whole record.

(L. 1993 S.B. 251 § 30)

Effective 1-1-94

Aggrieved party may file application with director, hearing held,when--findings, effect of.

287.965. 1. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon, except that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every insurer which made such filing.

2. If, after such hearing, the director finds that the filing does not meet the requirements of sections 287.930 to 287.975, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of sections 287.930 to287.975, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such insurer. The order shall not affect

any contract or policy made or issued prior to the expiration of the period set forth in such order.

(L. 1993 S.B. 251 § 31)

Effective 1-1-94

Advisory organization must obtain license, restrictions--license,application--designation of by director, duration.

287.967. 1. The advisory organization shall not provide any service relating to the rates of any insurance subject to sections287.930 to 287.975, and no insurer shall use the services of such organization for such purposes unless the organization has obtained a license under subsection 3 of this section.

2. The advisory organization shall not refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

3. An organization applying for the license for designation as the advisory organization shall include with its application:

(1) A copy of its constitution; charter; articles of organization, agreement, association or incorporation; and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this state upon whom notices, process affecting it, or orders of the director may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the director may require.

4. Every organization which has applied for the license shall notify the director of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty days before it becomes effective.

5. The director, upon a finding that an applicant and the individuals through whom it acts are competent, trustworthy and technically qualified to provide the services proposed, and that all requirements of law are met, shall issue one license to designate the advisory organization which specifies the authorized activity of the applicant. The director shall not issue the license if the proposed activity would tend to create a monopoly or to substantially lessen competition in the market.

6. The license issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked. The director may at any time, after hearing, revoke or suspend the license of the advisory organization if it does not comply with the requirements and standards of sections 287.930 to 287.975.

(L. 1993 S.B. 251 § 32)

Effective 1-1-94

Advisory organization not to file rates on behalf of insurer,exception.

287.970. In addition to other prohibitions contained in sections 287.930 to 287.975, except as specifically permitted under section 287.972, the advisory organization shall not:

(1) Compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit; or

(2) File rates, supplementary rate information or supporting information on behalf of an insurer.

(L. 1993 S.B. 251 § 33)

Effective 1-1-94

Advisory organization's permitted activities--director may allowpure premium rate data to be distributed.

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

(1) Develop statistical plans, including class definitions;

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

(3) Prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plans as specified in subsection 2 of this section. Such

data and adjustments should be in sufficient detail so as to permit insurers to modify such pure premiums based on their own rating methods or interpretations of underlying data;

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

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

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

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

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

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

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

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

2. The director of the department of insurance, financial institutions and professional registration will allow pure premium rate data, adjusted for loss development and loss trending, to be distributed, upon filing with the director with a final distribution in a format which allows a comparison of such data, adjusted for loss development without any trend factor, with a trend factor developed by the advisory organization, and with a trend factor developed by the director, for each of the various job classifications. Such data may be used, at their option, by workers' compensation insurers, self-funded employers, or self-insured groups of employers, to determine their own final rates or charges for workers' compensation insurance coverage. The authority to establish such a reporting format shall not be interpreted as allowing the director of the department of insurance, financial institutions and professional registration to set final rates where a competitive market exists under the provisions of sections287.930 to 287.975.

(L. 1993 S.B. 251 § 34, A.L. 2005 S.B. 1 & 130)

Pure premium rate, schedule of rates, filed with director,when--payroll differential, advisory organization to collectdata, when, purpose.

287.975. 1. The advisory organization shall file with the director every pure premium rate, every manual of rating rules, every rating schedule and every change or amendment, or modification of any of the foregoing, proposed for use in this state no more than thirty days after it is distributed to members, subscribers or others.

2. The advisory organization which makes a uniform classification system for use in setting rates in this state shall collect data for two years after January 1, 1994, on the payroll differential between employers within the construction group of code classifications, including, but not limited to, payroll costs of the employer and number of hours worked by all employees of the employer engaged in construction work. Such data shall be transferred to the department of insurance, financial institutions and professional registration in a form prescribed by the director of the department of insurance, financial institutions and professional registration, and the department shall compile the data and develop a formula to equalize premium rates for employers within the construction group of code classifications based on such payroll differential within three years after the data is submitted by the advisory organization.

*3. The formula to equalize premium rates for employers within the construction group of code classifications established under subsection 2 of this section shall be the formula in effect on January 1, 1999. This subsection shall become effective on January 1, 2014.

(L. 1993 S.B. 251 § 35, A.L. 2013 H.B. 404 & 614)

*Subsection 3 effective 1-01-14.