

AN ACT

To repeal sections 287.035, 287.037, and 287.128, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 287.035, 287.037, and 287.128, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.035, 287.037, and 287.128, to read as follows:

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 appellate 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is related to a partner or sole proprietor within the third degree of affinity or consanguinity unless such employee is withdrawn by the partner or sole proprietor from the coverage of the provisions of this chapter;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. 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.

7. For the purposes of this chapter, a partner in a limited partnership required to be registered under chapter 359, RSMo, shall have at least a five percent ownership interest in the partnership to be eligible for the exemption from coverage provided in subsection 1 of this section.

287.037. 1. 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, RSMo, 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, RSMo, 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 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. 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.

2. For the purposes of this section, a member in a limited liability company must have at least a five percent ownership interest in the company in order to reject coverage.

287.128. 1. It shall be unlawful for any person [to], including an insurance carrier, employer, or producer, or employees thereof, to:

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

(2) Knowingly present multiple claims for the same

occurrence with intent to defraud;

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

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

(a) Any person who knowingly presents any false or fraudulent claim or a defense to a 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 or a defense to a claim;

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

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

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

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

(9) 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.

(10) Knowingly make or cause to be made a false or fraudulent material statement to the fraud and noncompliance unit of the division of workers' compensation in the course of the investigation of fraud or noncompliance under this chapter.

For the purposes of subdivisions (8) [and], (9), and (10) of this subsection, the term "statement" includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X ray or test results.

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

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

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

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

3. Any person, including an insurance carrier, employer, or producer, or employees thereof, violating any of the provisions of subsections 1 and 2 of this section or section 287.129, shall be guilty of a class A misdemeanor [and, in addition], except

that any person violating any provisions of subsection 2 of this section or section 287.129, shall be guilty of a class D felony, or a C felony if the loss as a result of the violation is five hundred dollars or more. In addition, the person, insurance carrier, employer, producer, or employees thereof shall be liable to the state of Missouri for a fine not to exceed ten thousand dollars or double the value of the fraud whichever is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsections 1 and 2 of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of subsections 1 and 2 of this section or the provisions of section 287.129 shall be guilty of a class [D] C felony.

4. It shall be unlawful for any person, company, or other entity to:

(1) Form a limited partnership or a limited liability company for the purpose of avoiding workers' compensation insurance;

(2) Knowingly prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance;

(3) 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 not to exceed ten thousand dollars or double the value of the fraud, whichever is greater.

5. Any person, including the employer, a producer, or employees thereof 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, unless the loss as a result thereof is five hundred dollars or more, in which case the person shall be guilty of a class C felony. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of this section or the provisions of section 287.129 shall be guilty of a class [D] C felony.

[5.] 6. Any employer failing to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor, except that any employer who intentionally fails to insure his liability pursuant to this chapter shall be guilty of a class C felony if the loss as a result of the failure is five hundred dollars or more and, in addition, shall be liable to the state of Missouri for a penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or twenty-five thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section or the provisions of section 287.129 and who subsequently violates any of the provisions of this section or the provisions of section 287.129 shall be guilty of a class [D] C felony.

[6.] 7. 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.

8. Any complaints, reports, records, tapes, photographs, and similar materials or documentation submitted by any person, including the department of insurance, to the fraud and noncompliance unit of the division of workers' compensation or otherwise obtained by the unit pursuant to section 287.128, RSMo, used to conduct an investigation for any violation under chapter 287, RSMo, shall be considered confidential and not subject to the requirements of chapter 610, RSMo, except as defined under a rule or portion of a rule promulgated by the division under the

authority of this section and subject to approval by the labor and industrial relations commission. Nothing in this section prohibits the fraud and noncompliance unit of the division of workers' compensation, upon written request, from releasing the records to the local, state, or federal law enforcement authority conducting an investigation.

[7.] 9. 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.

10. Any prosecution for a violation of the provisions of this section or section 287.129, RSMo, shall be commenced within one year 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, but this provision shall not extend the period of limitation by more than three years. As used in this subdivision, 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.

11. Any employer or insurer who reports any accident or injury to the division outside the time frame mandated by section 287.380, RSMo, shall be assessed an administrative fine not to exceed five hundred dollars per incident as defined under a rule or portion of a rule promulgated by the division of workers'

compensation and subject to approval by the labor and industrial relations commission. The provisions of this section may be in addition to or in lieu of subdivision (4) of section 287.380, RSMo. Any administrative fines received shall be credited to the workers' compensation fund.