

SECOND REGULAR SESSION

# HOUSE BILL NO. 1693

99TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE DEGROOT.

4907H.011

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.223, 287.250, 287.300, 287.420, 287.480, 287.510, 287.530, 287.540, 287.560, 287.640, and 287.780, RSMo, and to enact in lieu thereof seventeen new sections relating to workers' compensation.

---

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

Section A. Sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.223, 287.250, 287.300, 287.420, 287.480, 287.510, 287.530, 287.540, 287.560, 287.640, and 287.780, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.250, 287.300, 287.420, 287.480, 287.510, 287.540, 287.560, 287.640, and 287.780, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. 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 or her 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 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

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

12 commercial zone as defined in section 390.020 or **as described in section 390.041**, or operating  
13 under a certificate issued by the Missouri department of transportation or by the United States  
14 Department of Transportation, or any of its subagencies. The word “employee” also shall not  
15 include any person performing services for board, lodging, aid, or sustenance received from any  
16 religious, charitable, or relief organization.

17 2. The word “accident” as used in this chapter shall mean ~~[an unexpected]~~ **a** traumatic  
18 event or unusual strain identifiable by time and place of occurrence and producing at the time  
19 objective symptoms of an injury caused by a specific event during a single work shift. An injury  
20 is not compensable because work was a triggering or precipitating factor.

21 3. (1) In this chapter the term “injury” is hereby defined to be an injury which has arisen  
22 out of and in the course of employment. An injury by accident **or occupational disease** is  
23 compensable only if the accident **or occupational exposure** was the prevailing factor in causing  
24 both the resulting medical condition and disability. “The prevailing factor” is defined to be the  
25 primary factor, in relation to ~~[any]~~ **all other [factor] factors combined**, causing both the resulting  
26 medical condition and disability.

27 (2) An injury **by accident or occupational disease** shall be deemed to arise out of and  
28 in the course of the employment only if:

29 (a) It is reasonably apparent, upon consideration of all the circumstances, that the  
30 accident **or occupational exposure** is the prevailing factor in causing the injury; ~~[and]~~

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

34 (c) **The employee was engaged in a work activity to the greater benefit of his or her**  
35 **employer when the occupational disease was contracted or accident occurred.**

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

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

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

47 employment, nor shall they include death due to natural causes occurring while the worker is at  
48 work.

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

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

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

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

70 8. The term “division” as used in this chapter means the division of workers’  
71 compensation of the department of labor and industrial relations of the state of Missouri.

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

75 10. In applying the provisions of this chapter, it is the intent of the legislature to reject  
76 and abrogate earlier case law interpretations on the meaning of or definition of “accident”,  
77 “occupational disease”, “arising out of”, and “in the course of the employment” to include, but  
78 not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d  
79 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and  
80 Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,  
81 or following those cases.

82 11. [~~For the purposes of this chapter, “occupational diseases due to toxic exposure” shall~~  
83 ~~only include the following: mesothelioma, asbestosis, berylliosis, coal worker’s~~  
84 ~~pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute~~  
85 ~~myelogenous leukemia, and myelodysplastic syndrome.~~

86 ~~———12.]~~ For the purposes of this chapter, “maximum medical improvement” shall mean the  
87 point at which the injured employee’s medical condition has stabilized and can no longer  
88 reasonably improve with additional medical care, as determined within a reasonable degree of  
89 medical certainty.

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

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

10 3. The statute of limitation referred to in section 287.430 shall not begin to run in cases  
11 of occupational disease until it becomes reasonably discoverable and apparent that an injury has  
12 been sustained related to such exposure, except that in cases of loss of hearing due to industrial  
13 noise said limitation shall not begin to run until the employee is eligible to file a claim as  
14 hereinafter provided in section 287.197. **An injury becomes reasonably discoverable and**  
15 **apparent when the injured employee knew or should have known his or her injury was**  
16 **related to his or her employment.**

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,  
2 unless a different meaning is clearly indicated by the context, an identifiable disease **or**  
3 **repetitive trauma injury** arising with or without human fault out of and in the course of the  
4 employment **as described in subsection 3 of section 287.020**. Ordinary diseases of life to  
5 which the general public is exposed outside of the employment shall not be compensable, except  
6 where the diseases follow as an incident of an occupational disease as defined in this section.  
7 The disease need not to have been foreseen or expected but after its contraction it must appear  
8 to have had its origin in a risk connected with the employment and to have flowed from that  
9 source as a rational consequence.

10 2. An injury or death by occupational disease is compensable only if the occupational  
11 exposure was the prevailing factor in causing both the resulting medical condition and disability.  
12 The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing

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

16 3. An injury due to repetitive motion is recognized as an occupational disease for  
17 purposes of this chapter. An occupational disease due to repetitive motion is compensable only  
18 if the occupational exposure was the prevailing factor in causing both the resulting medical  
19 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation  
20 to any other factor, causing both the resulting medical condition and disability. Ordinary,  
21 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal  
22 activities of day-to-day living shall not be compensable. **The injury is required to arise out  
23 of and in the course of employment as described in subsection 3 of section 287.020 to be  
24 compensable.**

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

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

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

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

45 8. With regard to occupational disease due to repetitive motion, if the exposure to the  
46 repetitive motion which is found to be the cause of the injury is for a period of less than three  
47 months and the evidence demonstrates that the exposure to the repetitive motion with the

48 immediate prior employer was the prevailing factor in causing the injury, the prior employer  
49 shall be liable for such occupational disease.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,  
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for  
3 personal injury or death of the employee by accident or occupational disease arising out of and  
4 in the course of the employee's employment. Any employee of such employer shall not be liable  
5 for any injury or death for which compensation is recoverable under this chapter and every  
6 employer and employees of such employer shall be released from all other liability whatsoever,  
7 whether to the employee or any other person, except that an employee shall not be released from  
8 liability for injury or death if the employee engaged in an affirmative negligent act that  
9 purposefully and dangerously caused or increased the risk of injury. The term "accident" as used  
10 in this section shall include, but not be limited to, injury or death of the employee caused by the  
11 unprovoked violence or assault against the employee by any person.

12 2. The rights and remedies herein granted to an employee shall exclude all other rights  
13 and remedies of the employee, the employee's spouse, parents, personal representatives,  
14 dependents, heirs or next kin, at common law or otherwise, on account of such injury or death  
15 by accident or occupational disease, except such rights and remedies as are not provided for by  
16 this chapter.

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

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

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

31 6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
32 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the  
33 workplace, the ~~[compensation and death]~~ **indemnity** benefit provided for herein shall be reduced

34 fifty percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed  
35 controlled drugs.

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

39 (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under  
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the  
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A  
42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's  
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section  
44 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter  
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled  
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

47 (4) Any positive test result for a nonprescribed controlled drug or the metabolites of such  
48 drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a  
49 preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's  
50 system at the time of the accident or injury and that the injury was sustained in conjunction with  
51 the use of the tested nonprescribed controlled drug if:

52 (a) The initial testing was administered within twenty-four hours of the accident or  
53 injury;

54 (b) Notice was given to the employee of the test results within fourteen calendar days  
55 of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

56 (c) The employee was given an opportunity to perform a second test upon the original  
57 sample; and

58 (d) The initial or any subsequent testing that forms the basis of the presumption was  
59 confirmed by mass spectrometry using generally accepted medical or forensic testing procedures.

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

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

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

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

73 8. Mental injury resulting from work-related stress does not arise out of and in the course  
74 of the employment, unless it is demonstrated that the stress is work related and was extraordinary  
75 and unusual **by comparison with employees working in the same position**. The amount of  
76 work stress shall be measured by objective standards and actual events.

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

80 10. The ability of a firefighter to receive benefits for psychological stress under section  
81 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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

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

8 (2) That employees must report all injuries immediately to the employer by advising the  
9 employer personally, the employer's designated individual or the employee's immediate boss,  
10 supervisor or foreman and that the employee may lose the right to receive compensation if the  
11 injury ~~[or illness]~~ **by accident** is not reported within thirty days or in the case of occupational  
12 illness or disease, within thirty days ~~[of the time he or she is reasonably aware of work~~  
13 ~~relatedness of the injury or illness]~~ **from when the injury becomes reasonably discoverable**  
14 **and apparent as described in subsection 3 of section 287.063**; employees who fail to notify  
15 their employer within thirty days may jeopardize their ability to receive compensation, and any  
16 other benefits under this chapter;

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

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



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

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

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

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

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

24 sum to be paid and same shall be paid by the employer prior to the medical examination. In no  
25 event, however, shall the employer or its insurer be required to pay transportation costs for a  
26 greater distance than two hundred fifty miles each way from place of treatment.

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

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

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

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

49             (2) One year from the date the first notice of dispute of the medical charge was received  
50 by the health care provider if such services were rendered after July 1, 2013.

51

52 Notice shall be presumed to occur no later than five business days after transmission by certified  
53 United States mail.

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

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

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

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

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

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

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

92           (1) The patient;

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

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

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

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

98 13. (1) No hospital, physician or other health care provider, other than a hospital,  
99 physician or health care provider selected by the employee at his **or her** own expense pursuant  
100 to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for  
101 services rendered to an employee due to a work-related injury or report to any credit reporting  
102 agency any failure of the employee to make such payment, when an injury covered by this  
103 chapter has occurred and such hospital, physician or health care provider has received actual  
104 notice given in writing by the employee, the employer or the employer's insurer. Actual notice  
105 shall be deemed received by the hospital, physician or health care provider five days after  
106 mailing by certified mail by the employer or insurer to the hospital, physician or health care  
107 provider.

108 (2) The notice shall include:

109 (a) The name of the employer;

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

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

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

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

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

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

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

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

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

287.150. 1. Where a third person is liable to the employee or to the dependents, for the  
2 injury or death, the employer shall be subrogated to the right of the employee or to the  
3 dependents against such third person, and the recovery by such employer shall not be limited to  
4 the amount payable as compensation to such employee or dependents, but such employer may  
5 recover any amount which such employee or his **or her** dependents would have been entitled to  
6 recover. Any recovery by the employer against such third person shall be apportioned between  
7 the employer and employee or his **or her** dependents using the provisions of subsections 2 and  
8 3 of this section.

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

17 3. Whenever recovery against the third person is effected by the employee or his **or her**  
18 dependents, the employer shall pay from his **or her** share of the recovery a proportionate share  
19 of the expenses of the recovery, including a reasonable attorney fee. After the expenses and  
20 attorney fee have been paid, the balance of the recovery shall be apportioned between the  
21 employer and the employee or his **or her** dependents in the same ratio that the amount due the  
22 employer bears to the total amount recovered if there is no finding of comparative fault on the  
23 part of the employee, or the total damages determined by the trier of fact if there is a finding of

24 comparative fault on the part of the employee. Notwithstanding the foregoing provision, the  
25 balance of the recovery may be divided between the employer and the employee or his **or her**  
26 dependents as they may otherwise agree. Any part of the recovery found to be due to the  
27 employer, the employee or his **or her** dependents shall be paid forthwith and any part of the  
28 recovery paid to the employee or his **or her** dependents under this section shall be treated by  
29 them as an advance payment by the employer on account of any future installments of  
30 compensation in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63 ~~—— (a) For employers that have elected to accept mesothelioma liability under this~~  
64 ~~subsection, an additional amount of three hundred percent of the state's average weekly wage~~



65 for two hundred twelve weeks shall be paid by the employer or group of employers such  
66 employer is a member of. Employers that elect to accept mesothelioma liability under this  
67 subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by  
68 becoming a member of a group insurance pool. A group of employers may enter into an  
69 agreement to pool their liabilities under this subsection. If such group is joined, individual  
70 members shall not be required to qualify as individual self-insurers. Such group shall comply  
71 with section 287.223. In order for an employer to make such an election, the employer shall  
72 provide the department with notice of such an election in a manner established by the  
73 department. The provisions of this paragraph shall expire on December 31, 2038; or

74 ——— (b) For employers who reject mesothelioma under this subsection, then the exclusive  
75 remedy provisions under section 287.120 shall not apply to such liability. The provisions of this  
76 paragraph shall expire on December 31, 2038; and

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

80 ——— (5) Notwithstanding any other provision of this chapter to the contrary, should the  
81 employee die before the additional benefits provided for in subdivision (2) and paragraph (a) of  
82 subdivision (3) of this subsection are paid, the additional benefits are payable to the employee's  
83 spouse or children, natural or adopted, legitimate or illegitimate, in addition to benefits provided  
84 under section 287.240. If there is no surviving spouse or children and the employee has received  
85 less than the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision  
86 (3) of this subsection the remainder of such additional benefits shall be paid as a single payment  
87 to the estate of the employee;

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

91 ——— 5. Any employee who obtains benefits under subdivision (2) of subsection 4 of this  
92 section for acquiring asbestosis who later obtains an award for mesothelioma shall not receive  
93 more benefits than such employee would receive having only obtained benefits for mesothelioma  
94 under this section.]

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

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

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

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

10 (4) If the wages were fixed by the day, hour, or by the output of the employee, the  
11 average weekly wage shall be computed by dividing by thirteen the wages earned while actually  
12 employed by the employer in each of the last thirteen calendar weeks immediately preceding the  
13 week in which the employee was injured or if actually employed by the employer for less than  
14 thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the  
15 employee was actually employed by the employer. For purposes of computing the average  
16 weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even  
17 if not in the same calendar week, shall be considered as absence for a calendar week. If the  
18 employee commenced employment on a day other than the beginning of a calendar week, such  
19 calendar week and the wages earned during such week shall be excluded in computing the  
20 average weekly wage pursuant to this subdivision;

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

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

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

35 2. For purposes of this section, the term "gross wages" includes, in addition to money  
36 payments for services rendered, the reasonable value of board, rent, housing, lodging or similar  
37 advance received from the employer, except if such benefits continue to be provided during the  
38 period of the disability, then the value of such benefits shall not be considered in calculating the  
39 average weekly wage of the employee. The term "wages", as used in this section, includes the  
40 value of any gratuities received in the course of employment from persons other than the  
41 employer to the extent that such gratuities are reported for income tax purposes. "Wages", as

42 used in this section, does not include fringe benefits such as retirement, pension, health and  
43 welfare, life insurance, training, Social Security or other employee or dependent benefit plan  
44 furnished by the employer for the benefit of the employee. Any wages paid to helpers or any  
45 money paid by the employer to the employee to cover any special expenses incurred by the  
46 employee because of the nature of his **or her** employment shall not be included in wages.

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

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

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

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

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

76 8. For an employee with multiple employments, as to the employee's entitlement to any  
77 temporary total or temporary partial disability benefits only pursuant to subsection 9 of section

78 287.220, and for no other purposes, the employee's total average weekly wage shall be equal to  
79 the sum of the total of the average weekly wage computed separately for each employment  
80 pursuant to the provisions of this section to which the employee is unable to return because of  
81 this injury.

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

91 **10. Notwithstanding any other provision of law, an allegation of the average weekly**  
92 **wage in a claim for compensation under this chapter shall not be considered a statement**  
93 **of fact deemed admitted if an answer to the claim for compensation is not timely filed.**

287.300. If ~~the~~ an employer is not insured ~~his~~ its liability hereunder shall be primary  
2 and direct. If ~~he is~~ insured ~~his~~ , its liability shall be secondary and indirect, and ~~his~~ its  
3 insurer shall be primarily and directly liable hereunder to the injured employee, his or her  
4 dependents or other persons entitled to rights hereunder. On the request of the division or the  
5 commission and at every hearing the employer shall produce and furnish it with a copy of ~~his~~  
6 its policy of insurance, and on demand the employer shall furnish the injured employee, or his  
7 or her dependents, with the correct name and address of ~~his~~ its insurer, and ~~his~~ the  
8 employer's failure to do so shall be prima facie evidence of ~~his~~ the employer's failure to  
9 insure, but the presumption shall be conclusively rebutted by an entry of appearance of ~~his~~ the  
10 employer's insurer. Both the employer and ~~his~~ its insurer shall be parties to all agreements or  
11 awards of compensation, but the same shall not be enforceable against the employer, except on  
12 motion and proof of default by the insurer. Service on the employer shall be sufficient to give  
13 the division or the commission jurisdiction over the person of both the employer and ~~his~~ its  
14 insurer, and the appearance of the employer in any proceeding shall also constitute the  
15 appearance of ~~his~~ its insurer, provided that after appearance by an insurer, the insurer shall be  
16 entitled to notice of all proceedings hereunder.

287.420. No proceedings for compensation for any accident under this chapter shall be  
2 maintained unless written notice of the time, place and nature of the injury, and the name and  
3 address of the person injured, has been given to the employer no later than thirty days after the  
4 accident, unless the employer was not prejudiced by failure to receive the notice. No

5 proceedings for compensation for any occupational disease or repetitive trauma under this  
6 chapter shall be maintained unless written notice of the time, place, and nature of the injury, and  
7 the name and address of the person injured, has been given to the employer no later than thirty  
8 days after the ~~[diagnosis of the condition]~~ **injury becomes reasonably discoverable and**  
9 **apparent as described in subsection 3 of section 287.063** unless the employee can prove the  
10 employer was not prejudiced by failure to receive the notice.

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

17 2. An employer who has been determined by the division to be an employer subject to  
18 and operating pursuant to this chapter and has also been determined to be uninsured may file an  
19 application for review but such application for review shall be accompanied with and attached  
20 to the application for review a bond which shall be conditioned for the satisfaction of the award  
21 in full, and if for any reason the appeal is dismissed or if the award is affirmed or modified, to  
22 satisfy in full such modification of the award as the commission may award. The surety on such  
23 bond shall be a bank, savings and loan institution or an insurance company licensed to do  
24 business in the state of Missouri. No appeal to the commission shall be considered filed unless  
25 accompanied by such bond and such bond shall also be a prerequisite for appeal as provided in  
26 section 287.495 and such appeal pursuant to section 287.495 shall not be considered filed unless  
27 accompanied by such bond. If any other employer pursuant to section 287.040 would be liable,  
28 the employee shall be paid benefits from the bond until the bond is exhausted before the section  
29 287.040 employer is required to pay.

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

**2. An appellate court shall have jurisdiction to review a temporary or partial award  
7 of compensation on the issue of the employer's liability where an employer claims it is not  
8 liable for paying any compensation and is disputing all liability.**

287.540. ~~[On notice to the other]~~ **By agreement of the parties, the commission [or court]**  
2 may permit the employer to be discharged from further liability under any agreement, award or  
3 judgment for compensation by furnishing to the person entitled thereto an annuity or other  
4 obligation, approved by the commission ~~[or court]~~, by which payment is assumed by some  
5 responsible person~~], or by depositing the commutable value thereof with the commission to be~~  
6 ~~disbursed to the persons entitled thereto in such manner as the commission shall determine] or~~  
7 **entity. The basis for approval of any such settlement shall be the same as provided for in**  
8 **section 287.390.**

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

21 defended them. **The cost of the proceedings shall include the value of the compensation paid**  
 22 **by the employer to defend the claim.** The division or the commission may permit a claimant  
 23 to prosecute a claim as a poor person as provided by law in civil cases.

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

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

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

287.780. 1. No employer or agent shall discharge or discriminate against any employee  
 2 for exercising any of his or her rights under this chapter when the exercising of such rights is the  
 3 motivating factor in the discharge or discrimination. Any employee who has been discharged  
 4 or discriminated against in such manner shall have a civil action for damages against his or her  
 5 employer. For purposes of this section, "motivating factor" shall mean that the employee's  
 6 exercise of his or her rights under this chapter actually played a role in the discharge or  
 7 discrimination and had a determinative influence on the discharge or discrimination.

8 **2. An offer of settlement of a workers' compensation case made contingent upon**  
 9 **a voluntary resignation of employment is not evidence that can be used in any civil action**  
 10 **brought under this section.**

~~287.223. 1. There is hereby created the "Missouri Mesothelioma Risk~~  
 2 ~~Management Fund", which shall be a body corporate and politic. The board of~~  
 3 ~~trustees of this fund shall have the powers and duties specified in this section and~~

4 such other powers as may be necessary or proper to enable it, its officers,  
5 employees and agents to carry out fully and effectively all the purposes of this  
6 section.

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

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

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

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

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

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

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

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

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

43 ~~7. All staff for the fund shall be provided by the department of labor~~  
44 ~~except as otherwise specifically determined by the board. The fund shall~~  
45 ~~reimburse the department of labor for all costs of providing staff required by this~~  
46 ~~subsection. Such reimbursement shall be made on an annual basis, pursuant to~~



47 contract negotiated between the fund and the department of labor. The fund is  
48 a body corporate and politic, and the state of Missouri shall not be liable in any  
49 way with respect to claims made against the fund or against member employers  
50 covered by the fund, nor with respect to any expense of operation of the fund.  
51 Money in the fund is not state money nor is it money collected or received by the  
52 state.

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

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

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

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

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

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

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

87 ~~15. The board shall meet in Jefferson City, Missouri, upon the written~~  
88 ~~call of the chairman or by the agreement of any three members of the board.~~  
89 ~~Notice of the meeting shall be delivered to all other trustees in person or by~~

90 ~~depositing notice in a United States post office in a properly stamped and~~  
91 ~~addressed envelope not less than six days prior to the date fixed for the meeting.~~  
92 ~~The board may meet at any time by unanimous mutual consent.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 ~~31. If contributions to the fund do not produce sufficient funds to pay any~~  
155 ~~claims which may be due, the board shall assess and each member, including any~~  
156 ~~member who has withdrawn but was a member in the year in which the~~  
157 ~~assessment is required, shall pay such additional amounts which are each~~  
158 ~~member's proportionate share of total claims allowed and due. The provisions~~  
159 ~~of this subsection shall apply retroactively to the creation of the Missouri~~  
160 ~~mesothelioma risk management fund.~~

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

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

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

2           ~~[287.530. 1. The compensation provided in this chapter may be~~  
3           ~~commuted by the division or the commission and redeemed by the payment in~~  
4           ~~whole or in part, by the employer, of a lump sum which shall be fixed by the~~  
5           ~~division or the commission, which sum shall be equal to the commutable value~~  
6           ~~of the future installments which may be due under this chapter, taking account~~  
7           ~~of life contingencies, the payment to be commuted at its present value upon~~  
8           ~~application of either party, with due notice to the other, if it appears that the~~  
9           ~~commutation will be for the best interests of the employee or the dependents of~~  
10           ~~the deceased employee, or that it will avoid undue expense or undue hardship to~~  
11           ~~either party, or that the employee or dependent has removed or is about to remove~~  
12           ~~from the United States or that the employer has sold or otherwise disposed of the~~  
13           ~~greater part of his business or assets.~~

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

✓