

FIRST REGULAR SESSION

# HOUSE BILL NO. 467

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BURNETT, JOHNSON (90), YOUNG, WALSH, CARNAHAN, MUCKLER, BLAND (Co-sponsors), HARRIS (23), LOWE, GEORGE, VOGT, DOUGHERTY, HUBBARD, HAYWOOD, JONES, WILSON (42) AND MEINERS.

Read 1<sup>st</sup> time February 13, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1612L.011

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### AN ACT

To repeal sections 287.030, 287.035, 287.037, 287.040, 287.063, 287.067, 287.070, 287.090, 287.100, 287.110, 287.120, 287.140, 287.141, 287.143, 287.146, 287.148, 287.149, 287.160, 287.170, 287.180, 287.190, 287.197, 287.200, 287.203, 287.210, 287.220, 287.240, 287.250, 287.270, 287.430, and 287.560, RSMo, and to enact in lieu thereof thirty-one new sections relating to workers' compensation benefits, with penalty provisions.

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

Section A. Sections 287.030, 287.035, 287.037, 287.040, 287.063, 287.067, 287.070, 287.090, 287.100, 287.110, 287.120, 287.140, 287.141, 287.143, 287.146, 287.148, 287.149, 287.160, 287.170, 287.180, 287.190, 287.197, 287.200, 287.203, 287.210, 287.220, 287.240, 287.250, 287.270, 287.430, and 287.560, RSMo, are repealed and thirty-one new sections enacted in lieu thereof, to be known as sections 287.030, 287.035, 287.037, 287.040, 287.063, 287.067, 287.070, 287.090, 287.100, 287.110, 287.120, 287.140, 287.141, 287.146, 287.148, 287.149, 287.160, 287.170, 287.180, 287.190, 287.197, 287.200, 287.203, 287.210, 287.220, 287.240, 287.250, 287.270, 287.355, 287.430, and 287.560, to read as follows:

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

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

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

5 corporation, using the service of another for pay;

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

10 (3) Any of the above-defined employers must have **[five] one** or more employees to be  
11 deemed an employer for the purposes of this chapter unless election is made to become subject  
12 to the provisions of this chapter as provided in subsection 2 of section 287.090[, except that  
13 construction industry employers who erect, demolish, alter or repair improvements shall be  
14 deemed an employer for the purposes of this chapter if they have one or more employees]. An  
15 employee who is a member of the employer's family within the third degree of affinity or  
16 consanguinity shall be counted in determining the total number of employees of such employer.

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

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

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

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

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

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

21 [6. (1) This chapter shall apply to any employee who is related to a partner or sole  
22 proprietor within the third degree of affinity or consanguinity unless such employee is withdrawn

23 by the partner or sole proprietor from the coverage of the provisions of this chapter;

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

287.037. Notwithstanding any other provision of law to the contrary, beginning January  
2 1, 1997, those insurance companies providing coverage pursuant to chapter 287, to a limited  
3 liability company, as defined in section 347.015, RSMo, shall provide coverage for the  
4 employees of the limited liability company who are not members of the limited liability  
5 company. Members of the limited liability company, as defined in section 347.015, RSMo, shall  
6 also be provided coverage pursuant to chapter 287[, but such members may individually elect  
7 to reject such coverage by providing a written notice of such rejection on a form developed by  
8 the department of insurance to the limited liability company and its insurer. Failure to provide  
9 notice to the limited liability company shall not be grounds for any member to claim that the  
10 rejection of such coverage is not legally effective. A member who elects to reject such coverage  
11 shall not thereafter be entitled to workers' compensation benefits under the policy, even if serving  
12 or working in the capacity of an employee of the limited liability company, at least until such  
13 time as said member provides the limited liability company and its insurer with a written notice  
14 which rescinds the prior rejection of such coverage. The written notice which rescinds the prior  
15 rejection of such coverage shall be on a form developed by the department of insurance. Any  
16 rescission shall be prospective in nature and shall entitle the member only to such benefits which  
17 accrue on or after the date the notice of rescission form is received by the insurance company].

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

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

9 of the tenant or lessee.

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

15 4. In all cases mentioned in the preceding subsections, the immediate contractor or  
16 subcontractor shall be liable as an employer of the employees of his subcontractors. All persons  
17 so liable may be made parties to the proceedings on the application of any party. The liability  
18 of the immediate employer shall be primary, and that of the others secondary in their order, and  
19 any compensation paid by those secondarily liable may be recovered from those primarily liable,  
20 with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original  
21 proceedings. No such employer shall be liable as in this section provided, if the employee was  
22 insured by his immediate or any intermediate employer. **In such event, the employer not liable**  
23 **under this section is not considered an employer entitled to immunity, as provided in**  
24 **section 287.120 from civil actions brought by the employee or employee's dependents, of**  
25 **the insured immediate or intermediate employer.**

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 is employed  
3 in an occupation or process in which the hazard of the disease exists, subject to the provisions  
4 relating to occupational disease due to repetitive motion, as is set forth in subsection 7 of section  
5 287.067, RSMo.

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 for which claim is made regardless of the length of time of such last exposure.

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

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 arising with  
3 or without human fault out of and in the course of the employment. Ordinary diseases of life to  
4 which the general public is exposed outside of the employment shall not be compensable, except  
5 where the diseases follow as an incident of an occupational disease as defined in this section.  
6 The disease need not to have been foreseen or expected but after its contraction it must appear

7 to have had its origin in a risk connected with the employment and to have flowed from that  
8 source as a rational consequence.

9         2. An occupational disease is compensable if it is clearly work related and meets the  
10 requirements of an injury which is compensable as provided in subsections 2 and 3 of section  
11 287.020. An occupational disease is not compensable merely because work was a triggering or  
12 precipitating factor.

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

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

22         5. Disease of the lungs or respiratory tract, hypotension, hypertension, **disease of the**  
23 **immune system, disease of the blood and vascular system**, or disease of the heart or  
24 cardiovascular system, including carcinoma, may be recognized as occupational diseases for the  
25 purposes of this chapter and are defined to be disability due to exposure to smoke, gases,  
26 carcinogens, inadequate oxygen, **contact with bodily fluids of another person as an incidence**  
27 **of employment, contact with used needles, syringes, or other medical apparatus**, or  
28 psychological stress of firefighters [of a paid fire department], **peace officers certified pursuant**  
29 **to chapter 590, RSMo, emergency medical technicians, or other health care workers** if a  
30 direct causal relationship is established. **In such event, a rebuttable presumption of a**  
31 **compensable injury or disease is created.**

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

35         7. With regard to occupational disease due to repetitive motion, if the exposure to the  
36 repetitive motion which is found to be the cause of the injury is for a period of less than three  
37 months and the evidence demonstrates that the exposure to the repetitive motion with a prior  
38 employer was the substantial contributing factor to the injury, the prior employer shall be liable  
39 for such occupational disease.

287.070. Disease of the lungs or respiratory tract or disease of the heart or cardiovascular  
2 system, including carcinoma, may be recognized as occupational diseases for the purposes of  
3 chapter 287, and are defined to be disability due to exposure to smoke, gases, or inadequate

4 oxygen, for peace officers certified pursuant to chapter 590, RSMo, or any person assisting in  
5 the cleanup or disposal if a direct causal relationship is established to exposure to an illegal  
6 controlled substance manufacturing laboratory. **In such event, a rebuttable presumption of**  
7 **a compensable injury or disease is created.**

287.090. 1. This chapter shall not apply to:

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

4 (2) [Qualified real estate agents and direct sellers as those terms are defined in Section  
5 3508 of Title 26 United States Code;

6 (3)] Employment where the person employed is an inmate confined in a state prison,  
7 penitentiary or county or municipal jail, or a patient or resident in a state mental health facility,  
8 and the labor or services of such inmate, patient, or resident are exclusively on behalf of the state,  
9 county or municipality having custody of said inmate, patient, or resident. Nothing in this  
10 subdivision is intended to exempt employment where the inmate, patient or resident was hired  
11 by a state, county or municipal government agency after direct competition with persons who are  
12 not inmates, patients or residents and the compensation for the position of employment is not  
13 contingent upon or affected by the worker's status as an inmate, patient or resident;

14 [(4)] (3) Volunteers of a tax-exempt organization which operates under the standards of  
15 Section 501(c)(3) of the federal Internal Revenue Code, where such volunteers are not paid  
16 wages, but provide services purely on a charitable and voluntary basis;

17 [(5)] (4) Persons providing services as adjudicators, sports officials, or contest workers  
18 for interscholastic activities programs or similar amateur youth programs who are not otherwise  
19 employed by the sponsoring school, association of schools or nonprofit tax-exempt organization  
20 sponsoring the amateur youth programs.

21 2. Any employer exempted from this chapter as to the employer or as to any class of  
22 employees of the employer [pursuant to the provisions of subdivision (3) of subsection 1 of  
23 section 287.030 or pursuant to subsection 1 of this section] may elect coverage as to the  
24 employer or as to the class of employees of that employer pursuant to this chapter by purchasing  
25 and accepting a valid workers' compensation insurance policy or endorsement, or by written  
26 notice to the group self-insurer of which the employer is a member. The election shall take effect  
27 on the effective date of the workers' compensation insurance policy or endorsement, or by written  
28 notice to the group self-insurer of which the employer is a member, and continue while such  
29 policy or endorsement remains in effect or until further written notice to the group self-insurer  
30 of which the employer is a member. Any such exempt employer or employer with an exempt  
31 class of employees may withdraw such election by the cancellation or nonrenewal of the workers'  
32 compensation insurance policy or endorsement, or by written notice to the group self-insurer of

33 which the employer is a member. In the event the employer is electing out of coverage as to the  
34 employer, the cancellation shall take effect on the later date of the cancellation of the policy or  
35 the filing of notice pursuant to subsection 3 of this section.

36 3. Any insurance company authorized to write insurance under the provisions of this  
37 chapter in this state shall file with the division a memorandum on a form prescribed by the  
38 division of any workers' compensation policy issued to any employer and of any renewal or  
39 cancellation thereof. **Any such insurance company shall also provide such detailed claim  
40 and financial information to the division as the division may require. As part of the  
41 process to remain authorized to write insurance under the provisions of this chapter, the  
42 insurer shall maintain a physical office within this state for the purpose of processing and  
43 adjusting all workers' compensation claims for benefits under this chapter. Such claims  
44 shall be adjusted by a person in this state. Such person is required to determine  
45 entitlement to benefits, authorize payment of benefits, manage the claim, and have  
46 authority to settle the claim. Use of a post office box address in Missouri does not  
47 constitute maintaining an office in this state.**

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

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

287.100. 1. Nothing in this chapter shall be construed as amending or repealing any  
2 statute or ordinance relating to associations or funds for the relief, pension, retirement, or other  
3 benefit of firemen, policemen, or other public employees, their widows, children or dependents,  
4 or as in any manner interfering with such associations, funds or benefits, now or hereafter  
5 established, but any such public employees, his widow, children or dependents, who shall receive  
6 compensation under this chapter shall have deducted from any benefit otherwise payable by any

7 pension or other benefit fund to which the municipal corporation or other public employer  
8 contributes, a part of such benefit proportionate to the amount then being contributed to such  
9 fund by such employer, which deductions shall be made only during the compensation period.  
10 Nor shall anything in this chapter be construed as interfering with the right of any public  
11 employee to draw full wages, or collect and retain his full fees, so long as he holds his office,  
12 appointment or employment, but the period during which the same are received after the injury  
13 shall be deducted from the period of compensation payments due hereunder.

14 **2. If this chapter is amended so as to reduce the amount of compensation benefits**  
15 **received by injured employees or their dependents, a fiscal note as to the savings created**  
16 **by such amendment shall be provided. A corresponding proportionate reduction in the**  
17 **premiums charged to the employer shall be made commensurate with the fiscal note**  
18 **identifying such savings.**

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

3 2. This chapter shall apply to all injuries received and occupational diseases contracted  
4 in this state, regardless of where the contract of employment was made, and also to all injuries  
5 received and occupational diseases contracted outside of this state under contract of employment  
6 made in this state, unless the contract of employment in any case shall otherwise provide, **to all**  
7 **injuries received and occupational diseases contracted outside of this state if the employee**  
8 **is a resident of this state at the time of injury or contraction of occupational disease,** and  
9 also to all injuries received and occupational diseases contracted outside of this state where the  
10 employee's employment was principally localized in this state.

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

8 **(1) Any person, employer as defined in this chapter, or other legal entity who or**  
9 **which in the course of business knowingly permits an unsafe work environment to exist**  
10 **shall not be immune from suit at common law by the employee or employee's survivors for**  
11 **resulting injury or death.**

12 **(2) If an employer denies compensation benefits, the employee or employee's**  
13 **survivors may pursue a civil action for damages at common law without the necessity of**  
14 **pursuing a hearing of the compensation claim before the division or commission.**



15           2. **If the rights and remedies herein granted to an employee result in an entitlement to**  
16 **compensation benefits under this chapter, such rights and remedies** shall exclude all other  
17 rights and remedies of the employee, [his wife, her husband] **the employee's spouse**, parents,  
18 personal representatives, dependents, heirs or next kin, at common law or otherwise, on account  
19 of such accidental injury or death, except such rights and remedies as are not provided for by this  
20 chapter. **If no compensation benefits under this chapter are allowed to the employee or the**  
21 **employee's dependents, the employee, employee's dependents, or employee's heirs may**  
22 **pursue a civil claim for damages for personal injury or death, including a wrongful death**  
23 **action as defined in section 537.100, RSMo, against the employer.**

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

27           4. Where the injury is caused by the failure of the employer to comply with any statute  
28 in this state, **any federal law or regulation**, or any lawful order of the division or the  
29 commission, the compensation and death benefit provided for under this chapter shall be  
30 increased fifteen percent, **and the immunity from civil liability granted to the employer**  
31 **under this chapter shall not apply.**

32           5. Where the injury is caused by the willful failure of the employee to use safety devices  
33 where provided by the employer, or from the employee's failure to obey any reasonable rule  
34 adopted by the employer for the safety of employees, which rule has been kept posted in a  
35 conspicuous place on the employer's premises, the compensation and death benefit provided for  
36 herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual  
37 knowledge of the rule so adopted by the employer; and provided, further, that the employer had,  
38 prior to the injury, made a diligent effort to cause his employees to use the safety device or  
39 devices and to obey or follow the rule so adopted for the safety of the employees.

40           6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
41 relating to the use of alcohol or nonprescribed controlled drugs in the workplace, which rule or  
42 policy has been kept posted in a conspicuous place on the employer's premises, the compensation  
43 and death benefit provided for herein shall be reduced fifteen percent if the injury was sustained  
44 in conjunction with the use of alcohol or nonprescribed controlled drugs; provided, that it is  
45 shown that the employee had actual knowledge of the rules or policy so adopted by the employer  
46 and, provided further that the employer had, prior to the injury, made a diligent effort to inform  
47 the employee of the requirement to obey any reasonable rule or policy adopted by the employer.

48           (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the  
49 employer's rule or policy which is posted and publicized as set forth in subdivision (1) is the  
50 proximate cause of the injury, then the benefits or compensation otherwise payable under this

51 chapter for death or disability shall be forfeited. The forfeiture of benefits or compensation shall  
52 not apply when:

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

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

58 **(3) The provisions of this subsection do not apply when it can be demonstrated that**  
59 **the employer does not uniformly enforce such rule or policy.**

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

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

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

69 [(c)] **(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. The amount of work stress shall be measured by objective standards and actual  
76 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 **or a peace officer certified pursuant to chapter 590,**  
81 **RSMo,** to receive benefits for psychological stress under section 287.067 shall not be diminished  
82 by the provisions of subsections 8 and 9 of this section.

83 **11. Knowledge of an injury obtained from any source on the part of an employer,**  
84 **his or her managing agent, superintendent, foreman, supervisor, lead, or other person with**  
85 **delegate managerial duties, whether in human resources or employee benefits, or**  
86 **knowledge of the assertion of a claim of injury sufficient to afford the opportunity to the**

87 **employer to make an investigation into the facts and circumstances is sufficient to toll the**  
88 **running of the statute of limitations set forth in section 287.430. If liability is not rejected**  
89 **within ninety days after the date of the filing of a claim for compensation, the injury shall**  
90 **be presumed compensable. Such presumption is rebuttable only by evidence discovered**  
91 **subsequent to the ninety- day period and which can be shown that with due diligence could**  
92 **have not been discovered.**

287.140. 1. In addition to all other compensation, the employee shall receive and the  
2 employer shall provide such medical, surgical, chiropractic, and hospital treatment, including  
3 nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or  
4 disability, to cure and relieve from the effects of the injury. If the employee desires, he **or she**  
5 shall have the right to select his **or her** own physician, surgeon, or other such requirement at [his  
6 own] **the employer's** expense, **provided that the employee notifies the employer of such**  
7 **selection before examination.** Where the requirements are furnished by a public hospital or  
8 other institution, payment therefor shall be made to the proper authorities. Regardless of whether  
9 the health care provider is selected by the employer or is selected by the employee [at the  
10 employee's expense], the health care provider shall have the affirmative duty to communicate  
11 fully with the employee regarding the nature of the employee's injury and recommended  
12 treatment [exclusive of] **including** any evaluation for a permanent disability rating. Failure to  
13 perform such duty to communicate shall constitute a disciplinary violation by the provider  
14 subject to the provisions of chapter 620, RSMo. When an employee [is required to submit]  
15 **submits** to medical examinations or necessary medical treatment [at a place outside of the local  
16 or metropolitan area from the place of injury or the place of his residence], the employer or its  
17 insurer shall advance or reimburse the employee for all necessary and reasonable expenses,  
18 **including mileage at the maximum rate per mile allowed by the Internal Revenue Service**  
19 **at the time that the mileage is incurred;** except that an injured employee who resides outside  
20 the state of Missouri and who is employed by an employer located in Missouri shall have the  
21 option of selecting the location of services provided in this section either at a location within one  
22 hundred miles of the injured employee's residence, place of injury or place of hire by the  
23 employer. [The choice of provider within the location selected shall continue to be made by the  
24 employer.] In case of a medical examination if a dispute arises as to what expenses shall be paid  
25 by the employer, the matter shall be presented to the legal advisor, the administrative law judge  
26 or the commission, who shall set the sum to be paid and same shall be paid by the employer prior  
27 to the medical examination. [In no event, however, shall the employer or its insurer be required  
28 to pay transportation costs for a greater distance than two hundred fifty miles each way from  
29 place of treatment.] In addition to all other payments authorized or mandated under this  
30 subsection, when an employee who has returned to full-time employment is required to submit

31 to a medical examination for the purpose of evaluating permanent disability, or to undergo  
32 physical rehabilitation, the employer or its insurer shall pay a proportionate weekly compensation  
33 benefit based on the provisions of section 287.180 for such wages that are lost due to time spent  
34 undergoing such medical examinations or physical rehabilitation, except that where the employee  
35 is undergoing physical rehabilitation, such proportionate weekly compensation benefit payment  
36 shall be limited to a time period of no more than twenty weeks. For purposes of this subsection  
37 only, "physical rehabilitation" shall mean the restoration of the seriously injured person as soon  
38 as possible and as nearly as possible to a condition of self-support and maintenance as an  
39 able-bodied worker. Determination as to what care and restoration constitutes physical  
40 rehabilitation shall be the sole province of the treating physician. Should the employer or its  
41 insurer contest the determination of the treating physician, then the director shall review the case  
42 at question and issue his determination. Such determination by the director shall be appealable  
43 like any other finding of the director or the division. Serious injury includes, but is not limited  
44 to, quadriplegia, paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury  
45 or nonuse, and back injuries not amenable alone to recognized medical and surgical procedures.

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

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

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

65         5. No compensation shall be payable for the death or disability of an employee, if and  
66 insofar as the death or disability may be caused, continued or aggravated by any unreasonable

67 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the  
68 opinion of the division or the commission, inconsiderable in view of the seriousness of the  
69 injury. If the employee dies as a result of an operation made necessary by the injury, the death  
70 shall be deemed to be caused by the injury.

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

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

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

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

93           10. The [employer] **employee** shall have the right to select the licensed treating  
94 physician, surgeon, chiropractic physician, or other health care provider; provided, however, that  
95 such physicians, surgeons or other health care providers shall offer only those services authorized  
96 within the scope of their licenses. [For the purpose of this subsection, subsection 2 of section  
97 287.030 shall not apply.]

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

- 103 (1) The patient;
- 104 (2) The employer of the patient with workers' compensation liability for the injury or  
105 disease being treated;
- 106 (3) The workers' compensation insurer of such employer; and
- 107 (4) The workers' compensation adjusting company for such insurer.
- 108 12. Violation of subsection 11 of this section is a class A misdemeanor.
- 109 13. (1) No hospital, physician or other health care provider, other than a hospital,  
110 physician or health care provider [selected by the employee at his own expense pursuant to  
111 subsection 1 of this section], shall bill or attempt to collect any fee or any portion of a fee for  
112 services rendered to an employee due to a work-related injury or report to any credit reporting  
113 agency any failure of the employee to make such payment, when an injury covered by this  
114 chapter has occurred and such hospital, physician or health care provider has received actual  
115 notice given in writing by the employee, the employer or the employer's insurer. Actual notice  
116 shall be deemed received by the hospital, physician or health care provider five days after  
117 mailing by certified mail by the employer or insurer to the hospital, physician or health care  
118 provider.
- 119 (2) The notice shall include:
- 120 (a) The name of the employer;
- 121 (b) The name of the insurer, if known;
- 122 (c) The name of the employee receiving the services;
- 123 (d) The general nature of the injury, if known; and
- 124 (e) Where a claim has been filed, the claim number, if known.
- 125 (3) When an injury is found to be noncompensable under this chapter, the hospital,  
126 physician or other health care provider shall be entitled to pursue the employee for any unpaid  
127 portion of the fee or other charges for authorized services provided to the employee. Any  
128 applicable statute of limitations for an action for such fees or other charges shall be tolled from  
129 the time notice is given to the division by a hospital, physician or other health care provider  
130 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in  
131 regard to the injury which is the basis of such services is made, or in the event there is an appeal  
132 to the labor and industrial relations commission, until a decision is rendered by that commission.
- 133 (4) If a hospital, physician or other health care provider or a debt collector on behalf of  
134 such hospital, physician or other health care provider pursues any action to collect from an  
135 employee after such notice is properly given, the employee shall have a cause of action against  
136 the hospital, physician or other health care provider for actual damages sustained plus up to one  
137 thousand dollars in additional damages, costs and reasonable attorney's fees.
- 138 (5) If an employer or insurer fails to make payment for authorized services provided to

139 the employee by a hospital, physician or other health care provider pursuant to this chapter, the  
140 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this  
141 section with a dispute against the employer or insurer for any fees or other charges for services  
142 provided.

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

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

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

20 3. In any case of serious injury involving disability following the period of rendition of  
21 medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is  
22 necessary [if the employer or insurer shall offer such physical rehabilitation to the injured  
23 employee and such physical rehabilitation is accepted by the employee], then in such case the  
24 director of the division of workers' compensation shall be immediately notified thereof and

25 thereupon enter [his] **the director's** approval to such effect, and the director of the division of  
26 workers' compensation shall requisition the payment of [forty dollars] **a sum equal to fifty**  
27 **percent of the applicable temporary total disability compensation rate** per week benefit from  
28 the second injury fund in the state treasury to be paid to the employee while [he] **the employee**  
29 is actually being rehabilitated, and shall immediately notify the state treasurer thereof by  
30 furnishing [him] **the state treasurer** with a copy of [his] **the director's approval** order. But in  
31 no case shall the period of physical rehabilitation extend beyond twenty weeks except in unusual  
32 cases and then only by a special order of the division of workers' compensation for such  
33 additional period as the division may authorize.

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

38 5.] If the parties disagree as to such physical rehabilitation treatment, where such  
39 treatment appears necessary, then either the employee, the employer, or insurer may file a request  
40 with the division of workers' compensation for an order for physical rehabilitation and the  
41 director of the division shall hear the parties within ten days after the filing of the request. The  
42 director of the division shall forthwith notify the parties of the time and place of the hearing, and  
43 the hearing shall be held at a place to be designated at the discretion of the division. The director  
44 of the division may conduct such hearing or [he] may direct one of the administrative law judges  
45 to conduct same. Such hearing shall be informal in all respects. The director of the division  
46 shall, after considering all evidence at such hearing, within ten days make [his] **an** order in the  
47 matter, either denying such request or ordering the employer or insurer within a reasonable time,  
48 to furnish physical rehabilitation, and ordering the employee to accept the same, at the expense  
49 of the employer or insurer. When the order requires physical rehabilitation, it shall also include  
50 an order to requisition the payment of [forty dollars] **a sum equal to fifty percent of the**  
51 **applicable temporary total disability compensation rate** per week out of the second injury  
52 fund in the state treasury to the injured employee during such time as such employee is actually  
53 receiving physical rehabilitation.

54 [6.] 5. In every case where physical rehabilitation shall be ordered, the director of the  
55 division may[, in his discretion,] order the employer or insurer to furnish transportation to the  
56 injured employee to such rehabilitation facility or institution.

57 [7.] 6. As used in this section, the term "physical rehabilitation" shall be deemed to  
58 include medical, surgical and hospital treatment in the same respect as required to be furnished  
59 under subsection 1 of section 287.140.

60 [8.] 7. An appeal from any order of the division of workers' compensation hereby created



61 to the appellate court may be taken and governed in all respects in the same manner as appeals  
62 in workers' compensation cases generally under section 287.495.

287.146. 1. When an employee has sustained injury of sufficient severity, as provided  
2 in section 287.148, as the result of an injury **or occupational disease** arising out of and in the  
3 course of employment, the employee may[, if authorized by the employer and the insurer,]  
4 receive vocational rehabilitation services that are reasonably necessary to restore him to suitable,  
5 gainful employment. **Upon application by the employee or employee's representative, the**  
6 **director shall determine whether the employee is entitled to receive such vocational**  
7 **rehabilitation services.**

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

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

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

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

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

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

287.148. 1. Within [one hundred and twenty days of the date of the injury] **sixty days**  
2 **from the date of the employee's application for vocational rehabilitation services**, the  
3 [employer] **director** shall determine whether the injured worker has sustained an injury that  
4 results in a loss of suitable, gainful employment. If the [employer] **director** can determine that  
5 a loss of suitable, gainful employment has occurred, the **director shall order the** employer  
6 [may] **to** retain the services of a rehabilitation practitioner or a rehabilitation provider. A written  
7 determination of this finding shall be sent to the division of workers' compensation with copies  
8 to the employer, insurer, employee and their representatives on forms approved by the division.  
9 In the event that a determination cannot be established, within [the one hundred and twenty days  
10 of the date of injury] **sixty days from the date of the employee's application for vocational**  
11 **rehabilitation services**, due to the extent of the injury, the employer shall, as regulated by the  
12 division of workers' compensation, continue to review the status of the injured employee at

13 appropriate intervals to determine [his] **the employee's** loss of suitable, gainful employment.  
14 If a rehabilitation practitioner or provider is retained by the employer, the rehabilitation  
15 practitioner or provider shall, within [ninety] **ten** days:

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

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

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

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

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

30 (3) Severe burns;

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

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

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

38 4. The initial period of a plan may not exceed a period of twenty-six weeks, but only the  
39 [employer] **director** may extend the period of the plan for **such** an additional [twenty-six-week]  
40 **time** period **that is reasonable**. Any extension shall be consistent with the initial plan and  
41 limited to no greater goal than restoration of the employee to suitable, gainful employment[. The  
42 maximum costs for implementing the vocational testing, vocational rehabilitation plan, or  
43 subsequent tuition or retraining shall not exceed five thousand dollars, exclusive of the costs of  
44 medical treatment, medical evaluation and fees paid to the vocational rehabilitation provider or  
45 practitioner, without the approval of the division] **at comparable wage**.

46 5. If rehabilitation services require residence at or near the facility, institution or  
47 practitioner's office and away from the employee's customary residence, reasonable and  
48 necessary costs of board, lodging and travel shall be borne by the employer or insurer.

49 Rehabilitation services shall be performed by practitioners and providers approved by the  
50 director within this state when such facilities or practitioners are reasonably available, or  
51 elsewhere when approved by the director.

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

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

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

10 **4. Employment is considered suitable, substantial, and gainful if:**

11 **(1) It returns the employee to no less than eighty-five percent of the employee's**  
12 **prior wage earning capacity; or**

13 **(2) It returns the employee to employment which equals or exceeds the average**  
14 **prevailing wage for the given job classification for the job held by the employee at the time**  
15 **of injury, as determined by the department of labor and industrial relations.**

287.160. 1. Except as provided in section 287.140, no compensation shall be payable  
2 for the first three days or less of disability during which the employer is open for the purpose of  
3 operating its business or enterprise unless the disability shall last longer than fourteen days. If  
4 the disability lasts longer than fourteen days, payment for the first three days shall be made  
5 retroactively to the [claimant] **employee**.

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

15 (1) Lump sum payment;

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

17 (3) Payroll deduction; or

18 (4) Secured installment plan.

19

20 If the employee is no longer employed by such employer, the employer may garnish the  
21 employee's wages or execute upon any property, except real estate, of the employee. Nothing  
22 in this subsection shall be construed to require any employer to make payments directly to the  
23 employee.

24 3. Where weekly benefit payments [that are not being contested by the employer or his  
25 insurer] are due, and if such weekly benefit payments are made more than thirty days after  
26 becoming due, the weekly benefit payments that are late shall be increased by ten percent simple  
27 interest per annum. Provided, however, that if such claim for weekly compensation is contested  
28 by the employee, and the employer or [his] **the employer's** insurer have not paid the disputed  
29 weekly benefit payments or lump sum within thirty days [of when the administrative law judge's  
30 order becomes final, or from the date of a decision by the labor and industrial relations  
31 commission, or from the date of the last judicial review, whichever is later] **after becoming due**,  
32 interest on such disputed weekly benefit payments or lump sum so ordered, shall be increased  
33 by ten percent simple interest per annum beginning thirty days [from the date of such order.  
34 Provided, however, that if such claims for weekly compensation are contested solely by the  
35 employer or insurer, no interest shall be payable until after thirty days after the award of the  
36 administrative law judge] **after becoming due**. The state of Missouri or any of its political  
37 subdivisions, as an employer, is liable for any such interest assessed against it for failure to  
38 promptly pay on any award issued against it under this chapter.

39 4. Compensation shall be payable in accordance with the rules given in sections 287.170,  
40 287.180, 287.190, 287.200, 287.240, and 287.250.

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

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

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

11 (2) For all injuries occurring on or after September 28, 1986, but before August 28,

12 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
13 the injured employee's average weekly earnings as of the date of the injury; provided that the  
14 weekly compensation paid under this subdivision shall not exceed an amount equal to  
15 seventy-five percent of the state average weekly wage, as such wage is determined by the  
16 division of employment security, as of the July first immediately preceding the date of injury;

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

22 (4) For all injuries occurring on or after August 28, 1991, **but before August 28, 2003,**  
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 five  
26 percent of the state average weekly wage;

27 (5) **For all injuries occurring on or after August 28, 2003, the weekly compensation**  
28 **shall be an amount equal to sixty-six and two-thirds percent of the injured employee's**  
29 **average weekly earnings as of the date of the injury; provided that the weekly**  
30 **compensation paid under this subdivision shall not exceed an amount equal to two**  
31 **hundred percent of the state average weekly wage;**

32 (6) 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 (7) **For all injuries occurring on or after August 28, 2003, the weekly compensation**  
35 **shall in no event be less than fifty percent of the state average weekly wage in effect as of**  
36 **the date of injury;**

37 (8) **Whenever the employer requests that an employee who is entitled to temporary**  
38 **total disability be certified by the treating physician as able to perform available work**  
39 **other than the employee's usual work, the employer shall furnish to the physician and a**  
40 **copy to the employee a statement describing the work available with the employer in terms**  
41 **that will enable the physician to relate the physical activities of the job to the employee's**  
42 **disability. The physician shall then determine whether the employee is physically able to**  
43 **perform the work described. The employee's temporary total disability payments shall**  
44 **continue until the employee is released by the treating physician for the work, and begins**  
45 **the work. If the work thereafter comes to an end before the employee's recovery is**  
46 **sufficient in the judgment of the treating physician to permit the employee to return to the**  
47 **employee's usual job, or to perform other available work offered by the employer, the**

48 **employee's temporary total disability payments shall be resumed when the employee ceases**  
49 **such work.**

50       **2. Once the employee returns to work under the terms of this section, the employee**  
51 **shall not be assigned by the employer to work other than the available work described**  
52 **without the employee's written consent, or without prior review and approval by the**  
53 **treating physician.**

54       **3.** Temporary total disability payments shall be made to the [claimant] **employee** by  
55 check or other negotiable instruments approved by the director which will not result in delay in  
56 payment and shall be forwarded directly to the [claimant] **employee** without intervention, or,  
57 when requested, to [claimant's] **employee's** attorney if represented, except as provided in section  
58 454.517, RSMo, by any other party except by order of the division of workers' compensation.

59       **[3.] 4.** The employer shall be entitled to a dollar-for-dollar credit against any benefits  
60 owed pursuant to this section in an amount equal to the amount of unemployment compensation  
61 paid to the employee and charged to the employer during the same adjudicated or agreed-upon  
62 period of temporary total disability.

287.180. 1. For temporary partial disability, compensation shall be paid during such  
2 disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent  
3 of the difference between the average earnings prior to the accident and the amount which the  
4 employee, in the exercise of reasonable diligence, will be able to earn during the disability, to  
5 be determined in view of the nature and extent of the injury and the ability of the employee to  
6 compete in an open labor market. The amount of such compensation shall be computed as  
7 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 as of the date of injury; provided that the weekly  
11 compensation paid under this subdivision shall not exceed an amount equal to seventy percent  
12 of the state average weekly wage, as such wages are determined by the division of employment  
13 security, as of the July first immediately preceding the date of injury;

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

20       (3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991,  
21 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the

22 injured employee's average weekly earnings as of the date of the injury; provided that the weekly  
23 compensation paid under this subdivision shall not exceed an amount equal to one hundred  
24 percent of the state average weekly wage;

25 (4) For all injuries occurring on or after August 28, 1991, **but before August 28, 2003,**  
26 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the  
27 injured employee's average weekly earnings as of the date of the injury; provided that the weekly  
28 compensation paid under this subdivision shall not exceed an amount equal to one hundred five  
29 percent of the state average weekly wage;

30 (5) **For all injuries occurring on or after August 28, 2003, the weekly compensation**  
31 **shall be an amount equal to sixty-six and two-thirds percent of the injured employee's**  
32 **average weekly earnings as of the date of the injury; provided that the weekly**  
33 **compensation paid under this subdivision shall not exceed an amount equal to two**  
34 **hundred percent of the state average weekly wage.**

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

287.190. 1. For permanent partial disability, which shall be in addition to compensation  
2 for temporary total disability or temporary partial disability paid in accordance with sections  
3 287.170 and 287.180, respectively, the employer shall pay to the employee compensation  
4 computed at the weekly rate of compensation in effect under subsection 5 of this section on the  
5 date of the injury for which compensation is being made, which compensation shall be allowed  
6 for loss by severance, total loss of use, or proportionate loss of use of one or more of the  
7 members mentioned in the schedule of losses.

8 SCHEDULE OF LOSSES

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

21 (12) Loss of either the middle or ring finger at second joint ..... 30

22 (13) Loss of either the middle or ring finger at the distal joint ..... 26

23 (14) Loss of little finger at proximal joint . . . . . 22

24 (15) Loss of little finger at second joint ..... 20

25 (16) Loss of little finger at distal joint ..... 16

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

27 of artificial limb ..... 207

28 (18) Loss of one leg at or above the knee, where the stump remains sufficient

29 to permit the use of artificial limb ..... 160

30 (19) Loss of one leg at or above ankle and below knee joint ..... 155

31 (20) Loss of one foot in tarsus ..... 150

32 (21) Loss of one foot in metatarsus ..... 110

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

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

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

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

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

38 (27) Complete deafness of both ears ..... 180

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

40 (29) Complete loss of the sight of one eye ..... 140

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

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

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

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

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

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

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

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

49 foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm,

50 hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

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

52 or arms, the division or commission may allow such additional sum for the compensation on

53 account thereof as it may deem just, but the sum shall not exceed forty weeks of compensation.

54 If both the employer and employee agree, the administrative law judge may utilize a photograph

55 of the disfigurement in determining the amount of such additional sum.

56 5. The amount of compensation to be paid under subsection 1 of this section shall be



57 computed as follows:

58 (1) For all injuries occurring on or after September 28, 1983, but before August 28,  
59 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
60 the employee's average weekly earnings as of the date of the injury; provided that the weekly  
61 compensation paid under this subdivision shall not exceed an amount equal to forty-five percent  
62 of the state average weekly wage, as such wage is determined by the division of employment  
63 security, as of the July first immediately preceding the date of injury;

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

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

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

76 (5) For all injuries occurring on or after August 28, 1992, **but before August 28, 2003**,  
77 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the  
78 employee's average weekly earnings as of the date of the injury; provided that the weekly  
79 compensation paid under this subdivision shall not exceed an amount equal to fifty-five percent  
80 of the state average weekly wage;

81 **(6) For all injuries occurring on or after August 28, 2003, the weekly compensation**  
82 **shall be an amount equal to sixty-six and two-thirds percent of the injured employee's**  
83 **average weekly earnings as of the date of the injury; provided that the weekly**  
84 **compensation paid under this subdivision shall not exceed an amount equal to one hundred**  
85 **percent of the state average weekly wage;**

86 **(7) For all injuries occurring on or after August 28, 2003, the weekly compensation**  
87 **shall in no event be less than fifty percent of the state average weekly wage in effect as of**  
88 **the date of injury.**

89 6. "Permanent partial disability" means a disability that is permanent in nature and partial  
90 in degree, and when payment therefor has been made in accordance with a settlement approved  
91 either by an administrative law judge or by the labor and industrial relations commission, a rating  
92 approved by an administrative law judge or legal advisor, or an award by an administrative law

93 judge or the commission, the percentage of disability shall be conclusively presumed to continue  
94 undiminished whenever a subsequent injury to the same member or same part of the body also  
95 results in permanent partial disability for which compensation under this chapter may be due;  
96 provided, however, the presumption shall apply only to compensable injuries which may occur  
97 after August 29, 1959.

98 **7. Whenever as a result of injury an employee becomes partially disabled from**  
99 **pursuing his or her usual and customary line of employment, the employee may elect to**  
100 **receive compensation in lieu of the other benefits provided in this section equal to two-**  
101 **thirds of the difference between the average amount which the employee would be able to**  
102 **earn in the full performance of the employee's duties in the occupation which the employee**  
103 **was engaged at the time of the injury and the average amount the employee is earning or**  
104 **is able to earn in some suitable employment or business after the injury.**

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

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

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

23 4. In measuring hearing impairment, the lowest measured losses in each of the [three]  
24 **five** frequencies shall be added together and divided by [three] **five** to determine the average

25 decibel loss. For every decibel of loss exceeding fifteen decibels an allowance of one and  
26 one-half percent shall be made up to the maximum of one hundred percent which is reached at  
27 eighty-two decibels.

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

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

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

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

45 [9.] **8.** No consideration shall be given to the question of whether or not the ability of an  
46 employee to understand speech is improved by the use of a hearing aid.

287.200. 1. Compensation for permanent total disability shall be paid during the  
2 continuance of such disability for the lifetime of the employee at the weekly rate of  
3 compensation in effect under this subsection on the date of the injury for which compensation  
4 is being made. The amount of such compensation shall be computed as follows:

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

12 (2) For all injuries occurring on or after September 28, 1986, but before August 28,  
13 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
14 the injured employee's average weekly earnings during the year immediately preceding the

15 injury, as of the date of the injury; provided that the weekly compensation paid under this  
16 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly  
17 wage, as such wage is determined by the division of employment security, as of the July first  
18 immediately preceding the date of injury;

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

24 (4) For all injuries occurring on or after August 28, 1991, **but before August 28, 2003**,  
25 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the  
26 injured employee's average weekly earnings as of the date of the injury; provided that the weekly  
27 compensation paid under this subdivision shall not exceed an amount equal to one hundred five  
28 percent of the state average weekly wage;

29 (5) **For all injuries occurring on or after August 28, 2003, the weekly compensation**  
30 **shall be an amount equal to sixty-six and two-thirds percent of the injured employee's**  
31 **average weekly earnings as of the date of the injury; provided that the weekly**  
32 **compensation paid under this subdivision shall not exceed an amount equal to two**  
33 **hundred percent of the state average weekly wage;**

34 (6) For all injuries occurring on or after September 28, 1981, **but before August 28,**  
35 **2003**, the weekly compensation shall in no event be less than forty dollars per week;

36 (7) **For all injuries occurring on or after August 28, 2003, the weekly compensation**  
37 **shall in no event be less than fifty percent of the state average weekly wage in effect as of**  
38 **the date of injury.**

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

50 **3. If an employee is adjudged as being disabled pursuant to a claim for Social**

51 **Security disability income benefits, such judgment creates a rebuttable presumption of**  
52 **permanent total disability under this section.**

287.203. Whenever the employer has provided compensation under section 287.170,  
2 287.180 or 287.200, **or furnishes medical aid under section 287.140**, and terminates such  
3 compensation **or medical aid**, the employer shall notify the employee of such termination and  
4 shall advise the employee of the reason for such termination. If the employee disputes the  
5 termination of such benefits, the employee may request a hearing before the division and the  
6 division shall set the matter for hearing within sixty days of such request and the division shall  
7 hear the matter on the date of hearing and no continuances or delays may be granted except upon  
8 a showing of good cause or by consent of the parties. The division shall render a decision within  
9 thirty days of the date of hearing. Reasonable cost of recovery shall be awarded to the prevailing  
10 party.

287.210. 1. After an employee has received an injury he shall from time to time  
2 thereafter during disability submit to reasonable medical examination at the request of the  
3 employer, his insurer, the commission, the division or an administrative law judge, the time and  
4 place of which shall be fixed with due regard to the convenience of the employee and his  
5 physical condition and ability to attend. The employee may have his own physician present, and  
6 if the employee refuses to submit to the examination, or in any way obstructs it, his right to  
7 compensation shall be forfeited during such period unless in the opinion of the commission the  
8 circumstances justify the refusal or obstruction.

2. The commission, the division or administrative law judge shall, when deemed  
9 necessary, appoint a duly qualified impartial physician to examine the injured employee, and any  
10 physician so chosen, if he accepts the appointment, shall promptly make the examination  
11 requested and make a complete medical report to the commission or the division in such  
12 duplication as to provide all parties with copies thereof. The physician's fee shall be fair and  
13 reasonable, as provided in subsection 3 of section 287.140, and the fee and other reasonable costs  
14 of the impartial examination may be paid as other costs under this chapter. If all the parties shall  
15 have had reasonable access thereto, the report of the physician shall be admissible in evidence.  
16

3. The testimony of any physician who treated or examined the injured employee shall  
17 be admissible in evidence in any proceedings for compensation under this chapter, but only if  
18 the medical report of the physician has been made available to all parties as in this section  
19 provided. Immediately upon receipt of notice from the division or the commission setting a date  
20 for hearing of a case in which the nature and extent of an employee's disability is to be  
21 determined, the parties or their attorneys shall arrange, without charge or costs, each to the other,  
22 for an exchange of all medical reports, including those made both by treating and examining  
23 physician or physicians, to the end that the parties may be commonly informed of all medical  
24

25 findings and opinions. The exchange of medical reports shall be made at least seven days before  
26 the date set for the hearing and failure of any party to comply may be grounds for asking for and  
27 receiving a continuance, upon proper showing by the party to whom the medical reports were  
28 not furnished. If any party fails or refuses to furnish the opposing party with the medical report  
29 of the treating or examining physician at least seven days before such physician's deposition or  
30 personal testimony at the hearing, as in this section provided, upon the objection of the party who  
31 was not provided with the medical report, the physician shall not be permitted to testify at that  
32 hearing or by medical deposition.

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

35 5. As used in this chapter the terms "physician's report" and "medical report" mean the  
36 report of any physician made on any printed form authorized by the division or the commission  
37 or any complete medical report. As used in this chapter the term "complete medical report"  
38 means the report of a physician giving the physician's qualifications and the patient's history,  
39 complaints, details of the findings of any and all laboratory, X-ray and all other technical  
40 examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage  
41 of permanent partial disability, if any. An element or elements of a complete medical report may  
42 be met by the physician's records.

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

48 7. The testimony of a treating or examining physician may be submitted in evidence on  
49 the issues in controversy by a complete medical report and shall be admissible without other  
50 foundational evidence subject to compliance with the following procedures. The party intending  
51 to submit a complete medical report in evidence shall give notice at least sixty days prior to the  
52 hearing to all parties and shall provide reasonable opportunity to all parties to obtain  
53 cross-examination testimony of the physician by deposition. The notice shall include a copy of  
54 the report and all the clinical and treatment records of the physician including copies of all  
55 records and reports received by the physician from other health care providers. The party  
56 offering the report must make the physician available for cross-examination testimony by  
57 deposition not later than seven days before the matter is set for hearing, and each cross-examiner  
58 shall compensate the physician for the portion of testimony obtained in an amount not to exceed  
59 a rate of reasonable compensation taking into consideration the specialty practiced by the  
60 physician. Cross-examination testimony shall not bind the cross-examining party. Any

61 testimony obtained by the offering party shall be at that party's expense on a proportional basis,  
62 including the deposition fee of the physician. Upon request of any party, the party offering a  
63 complete medical report in evidence must also make available copies of X rays or other  
64 diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of  
65 such notice a party shall dispute whether a report meets the requirements of a complete medical  
66 report by providing written objections to the offering party stating the grounds for the dispute,  
67 and at the request of any party, the administrative law judge shall rule upon such objections upon  
68 pretrial hearing whether the report meets the requirements of a complete medical report and upon  
69 the admissibility of the report or portions thereof. If no objections are filed the report is  
70 admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the  
71 parties from agreeing to admit medical reports or records by consent. [The provisions of this  
72 subsection shall not apply to claims against the second injury fund.]

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

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

287.220. 1. All cases of permanent disability where there has been previous disability  
2 shall be compensated as herein provided. Compensation shall be computed on the basis of the  
3 average earnings at the time of the last injury. If any employee who has a preexisting permanent  
4 partial disability whether from compensable injury or otherwise, of such seriousness as to  
5 constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee  
6 becomes unemployed, and the preexisting permanent partial disability, if a body as a whole  
7 injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only,  
8 equals a minimum of fifteen percent permanent partial disability, **or if loss of vision or loss of**  
9 **hearing equals a minimum of fifteen percent permanent partial disability of the scheduled**  
10 **injury**, according to the medical standards that are used in determining such compensation,  
11 receives a subsequent compensable injury resulting in additional permanent partial disability so  
12 that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks  
13 compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum  
14 of fifteen percent permanent partial disability, **or if loss of vision or loss of hearing equals a**  
15 **minimum of fifteen percent permanent partial disability of the scheduled injury** caused by  
16 the combined disabilities is substantially greater than that which would have resulted from the  
17 last injury, considered alone and of itself, and if the employee is entitled to receive compensation

18 on the basis of the combined disabilities, the employer at the time of the last injury shall be liable  
19 only for the degree or percentage of disability which would have resulted from the last injury had  
20 there been no preexisting disability. After the compensation liability of the employer for the last  
21 injury, considered alone, has been determined by an administrative law judge or the commission,  
22 the degree or percentage of employee's disability that is attributable to all injuries or conditions  
23 existing at the time the last injury was sustained shall then be determined by that administrative  
24 law judge or by the commission and the degree or percentage of disability which existed prior  
25 to the last injury plus the disability resulting from the last injury, if any, considered alone, shall  
26 be deducted from the combined disability, and compensation for the balance, if any, shall be paid  
27 out of a special fund known as the second injury fund, hereinafter provided for. If the previous  
28 disability or disabilities, whether from compensable injury or otherwise, and the last injury  
29 together result in total and permanent disability, the minimum standards under this subsection  
30 for a body as a whole injury, **scheduled injury involving loss of vision or loss of hearing**, or  
31 a major extremity injury shall not apply and the employer at the time of the last injury shall be  
32 liable only for the disability resulting from the last injury considered alone and of itself; except  
33 that if the compensation for which the employer at the time of the last injury is liable is less than  
34 the compensation provided in this chapter for permanent total disability, then in addition to the  
35 compensation for which the employer is liable and after the completion of payment of the  
36 compensation by the employer, the employee shall be paid the remainder of the compensation  
37 that would be due for permanent total disability under section 287.200 out of a special fund  
38 known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section  
39 provided and for special weekly benefits in rehabilitation cases as provided in section 287.141.  
40 Maintenance of the second injury fund shall be as provided by section 287.710. The state  
41 treasurer shall be the custodian of the second injury fund which shall be deposited the same as  
42 are state funds and any interest accruing thereon shall be added thereto. The fund shall be  
43 subject to audit the same as state funds and accounts and shall be protected by the general bond  
44 given by the state treasurer. Upon the requisition of the director of the division of workers'  
45 compensation, warrants on the state treasurer for the payment of all amounts payable for  
46 compensation and benefits out of the second injury fund shall be issued.

47       2. In all cases in which a recovery against the second injury fund is sought for permanent  
48 partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall  
49 be named as a party, and shall be entitled to defend against the claim. The state treasurer, with  
50 the advice and consent of the attorney general of Missouri, may enter into compromise  
51 settlements as contemplated by section 287.390, or agreed statements of fact that would affect  
52 the second injury fund. All awards for permanent partial disability, permanent total disability,  
53 or death affecting the second injury fund shall be subject to the provisions of this chapter



54 governing review and appeal. For all claims filed against the second injury fund on or after July  
55 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where  
56 an actual or potential conflict of interest exists, to provide legal services as may be required in  
57 all claims made for recovery against the fund. Any legal expenses incurred by the attorney  
58 general's office in the handling of such claims, including, but not limited to, medical examination  
59 fees, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall  
60 be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be  
61 contingent upon annual appropriations made by the general assembly, from the fund, to the  
62 attorney general's office for this specific purpose.

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

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

68         5. If an employer fails to insure or self-insure as required in section 287.280, funds from  
69 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses  
70 to cure and relieve the effects of the injury or disability of an injured employee in the employ of  
71 an uninsured employer, **temporary total disability, temporary partial disability, permanent**  
72 **partial disability, permanent total disability**, or in the case of death of an employee in the  
73 employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover  
74 fair, reasonable, and necessary expenses in the manner required in sections 287.240 and 287.241.  
75 In defense of claims arising under this subsection, the treasurer of the state of Missouri, as  
76 custodian of the second injury fund, shall have the same defenses to such claims as would the  
77 uninsured employer. Any funds received by the employee or the employee's dependents, through  
78 civil or other action, must go towards reimbursement of the second injury fund, for all payments  
79 made to the employee, the employee's dependents, or paid on the employee's behalf, from the  
80 second injury fund pursuant to this subsection. The office of the attorney general of the state of  
81 Missouri shall bring suit in the circuit court of the county in which the accident occurred against  
82 any employer not covered by this chapter as required in section 287.280.

83         6. Every three years the second injury fund shall have an actuarial study made to  
84 determine the solvency of the fund, appropriate funding level of the fund, and forecasted  
85 expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988.  
86 The expenses of such actuarial studies shall be paid out of the fund for the support of the division  
87 of workers' compensation.

88         7. The director of the division of workers' compensation shall maintain the financial data  
89 and records concerning the fund for the support of the division of workers' compensation and the

90 second injury fund. The division shall also compile and report data on claims made pursuant to  
91 subsection 9 of this section. The attorney general shall provide all necessary information to the  
92 division for this purpose.

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

95 9. Any employee who at the time a compensable work-related injury is sustained is  
96 employed by more than one employer, the employer for whom the employee was working when  
97 the injury was sustained shall be responsible for wage loss benefits applicable only to the  
98 earnings in that employer's employment and the injured employee **or the employee's**  
99 **dependants** shall be entitled to file a claim against the second injury fund for [any additional  
100 wage loss benefits] **temporary total disability, temporary partial disability, permanent**  
101 **partial disability, permanent total disability, and death compensation benefits** attributed to  
102 loss of earnings from the employment or employments where the injury did not occur, up to the  
103 maximum weekly benefit less those benefits paid by the employer in whose employment the  
104 employee sustained the injury. The employee shall be entitled to a total benefit based on the total  
105 average weekly wage of such employee computed according to subsection 8 of section 287.250.  
106 The employee shall not be entitled to a greater rate of compensation than allowed by law on the  
107 date of the injury. The employer for whom the employee was working where the injury was  
108 sustained shall be responsible for all medical costs incurred in regard to that injury.

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

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

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

20 (2) The employer shall also pay to the total dependents of the employee a death benefit  
21 based on the employee's average weekly earnings during the year immediately preceding the  
22 injury that results in the death of the employee, as provided in section 287.250. The amount of  
23 compensation for death, which shall be paid in installments in the same manner that  
24 compensation is required to be paid under this chapter, shall be computed as follows:

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

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

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

46 (d) If the injury which caused the death occurred on or after August 28, 1991, **but before**  
47 **August 28, 2003**, the weekly compensation shall be an amount equal to sixty-six and two-thirds  
48 percent of the injured employee's average weekly earnings as of the date of the injury; provided  
49 that the weekly compensation paid under this paragraph shall not exceed an amount equal to one  
50 hundred five percent of the state average weekly wage;

51 (e) **If the injury which caused the death occurred on or after August 28, 2003, the**  
52 **weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the**  
53 **injured employee's average weekly earnings as of the date of the injury; provided that the**

54 **weekly compensation paid under this paragraph shall not exceed an amount equal to two**  
55 **hundred percent of the state average weekly wage;**

56 (f) If the injury which caused the death occurred on or after September 28, 1981, **but**  
57 **before August 28, 2003**, the weekly compensation shall in no event be less than forty dollars  
58 per week;

59 (g) **If the injury which caused the death occurred on or after August 28, 2003, the**  
60 **weekly compensation shall in no event be less than fifty percent of the state average weekly**  
61 **wage in effect as of the date of injury;**

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

66 (4) **Within thirty days of the receipt of notice of an employee's compensable death**  
67 **arising out of and in the course of employment, the employer shall pay to the total**  
68 **dependents an advancement of compensation of twenty-five thousand dollars;**

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

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

84 (b) A natural, posthumous, or adopted child or children, whether legitimate or  
85 illegitimate, under the age of eighteen years, or over that age if physically or mentally  
86 incapacitated from wage earning, upon the parent legally liable for the support or with whom he,  
87 she, or they are living at the time of the death of the parent. In case there is a wife or a husband  
88 mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and  
89 a child or more than one child thus dependent, the death benefit shall be divided among them in

90 such proportion as may be determined by the commission after considering their ages and other  
91 facts bearing on the dependency. In all other cases questions of total or partial dependency shall  
92 be determined in accordance with the facts at the time of the injury, and in such other cases if  
93 there is more than one person wholly dependent the death benefit shall be divided equally among  
94 them. The payment of death benefits to a child or other dependent as provided in this paragraph  
95 shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and  
96 mentally capable of wage earning over that age, or until twenty-two years of age if the child of  
97 the deceased is in attendance and remains as a full-time student in any accredited educational  
98 institution, or if at eighteen years of age the dependent child is a member of the armed forces of  
99 the United States on active duty; provided, however, that such dependent child shall be entitled  
100 to compensation during four years of full-time attendance at a fully accredited educational  
101 institution to commence prior to twenty-three years of age and immediately upon cessation of  
102 his active duty in the armed forces, unless there are other total dependents entitled to the death  
103 benefit under this chapter;

104           [(5)] (6) The division or the commission may, in its discretion, order or award the share  
105 of compensation of any such child to be paid to the parent, grandparent, or other adult next of  
106 kin or conservator of the child for the latter's support, maintenance and education, which order  
107 or award upon notice to the parties may be modified from time to time by the commission in its  
108 discretion with respect to the person to whom shall be paid the amount of the order or award  
109 remaining unpaid at the time of the modification;

110           [(6)] (7) The payments of compensation by the employer in accordance with the order  
111 or award of the division or the commission shall discharge the employer from all further  
112 obligations as to the compensation;

113           [(7)] (8) All death benefits in this chapter shall be paid in installments in the same  
114 manner as provided for disability compensation;

115           [(8)] (9) Every employer shall keep a record of the correct names and addresses of the  
116 dependents of each of his employees, and upon the death of an employee by accident arising out  
117 of and in the course of his employment shall so far as possible immediately furnish the division  
118 with such names and addresses;

119           [(9)] (10) Dependents receiving death benefits under the provisions of this chapter shall  
120 annually report to the division as to marital status in the case of a widow or widower or age and  
121 physical or mental condition of a dependent child. The division shall provide forms for the  
122 making of such reports;

123           **(11) In addition to all other compensation benefits payable for the death of the**  
124 **employee, scholarships shall be provided for the spouses and dependent children of**  
125 **employees who die as a result of compensable work-related injuries, if the dependents are**

126 entitled to benefits under this chapter. Scholarships are payable to accredited  
127 postsecondary educational institutions in Missouri on behalf of the dependent students  
128 attending the institutions. Eligible dependents may qualify for a maximum of two  
129 thousand dollars per semester while attending a postsecondary educational institution  
130 within this state. No student may receive assistance pursuant to this section for more than  
131 five years;

132 (12) If at the time of death the employee left no survivors who would be entitled to  
133 benefits under this section, the employer shall pay the sum of twenty-five thousand dollars  
134 to Kid's Chance of Missouri, Inc.

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 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. **The responsibility for apportionment of responsibility for all weekly  
82 compensation benefits shall be calculated pursuant to subsection 9 of section 287.220.**

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

          287.270. No savings or insurance of the injured employee, nor any benefits derived from  
2 any other source than the employer or the employer's insurer for liability under this chapter, shall  
3 be considered in determining the compensation due hereunder; except as provided in subsection  
4 3 of section 287.170[, and employers of professional athletes under contract shall be entitled to  
5 full credit for wages or benefits paid to the employee after the injury including medical, surgical  
6 or hospital benefits paid to or for the employee or his dependents on account of the injury,  
7 disability, or death, pursuant to the provisions of the contract].

**287.355. 1. An employer, or if insured, its insurer, shall conduct a reasonable**



2 **investigation of all claims for workers' compensation benefits prior to denying any such**  
3 **claim. A reasonable investigation based on all available information is whatever steps a**  
4 **reasonably prudent person with knowledge of the legal standards for determining**  
5 **compensability would take in a good faith effort to ascertain the facts underlying a claim,**  
6 **giving due consideration to the cost of the investigation and the likely value of the claim.**  
7 **Factors that may be considered in determining whether a reasonable investigation was**  
8 **conducted may include, but not be limited to, whether the employer or insurer:**

9       **(1) Reviewed all the information provided by the report of injury, written notice**  
10 **of injury, oral notice of injury, medical reports and records, and all other information**  
11 **initially supplied to the employer and insurer;**

12       **(2) Requested additional information from the employee, employer, medical**  
13 **provider, or any witnesses to the claim. Information obtained shall be documented by**  
14 **handwritten memoranda, computerized notes, stored e-mail, and computerized stored**  
15 **correspondence, as well as any statements which may have been voluntarily given by any**  
16 **of the parties and witnesses;**

17       **(3) Obtained clarification of information in a medical report;**

18       **(4) Conducted an examination or tests at the injury scene;**

19       **(5) Obtained an expert opinion of an unclear or unique fact situation; and**

20       **(6) Followed up with witnesses.**

21       **2. Failure to conduct such a reasonable investigation prior to denial of**  
22 **compensation shall constitute a waiver of the immunity from civil liability for damages**  
23 **related thereto sustained by the employee or employee's dependents.**

287.430. [Except for a claim for recovery filed against the second injury fund,] No  
2 proceedings for compensation under this chapter shall be maintained unless a claim therefor is  
3 filed with the division within two years after the date of injury or death, or the last payment made  
4 under this chapter on account of the injury or death, except that if the report of the injury or the  
5 death is not filed by the employer as required by section 287.380, the claim for compensation  
6 may be filed within three years after the date of injury, death, or last payment made under this  
7 chapter on account of the injury or death. The filing of any form, report, receipt, or agreement,  
8 other than a claim for compensation, shall [not] toll the running of the periods of limitation  
9 provided in this section. The filing of the report of injury or death three years or more after the  
10 date of injury, death, or last payment made under this chapter on account of the injury or death,  
11 shall [not] toll the running of the periods of limitation provided in this section, [nor] **and** shall  
12 [such filing] reactivate [or] **and** revive the period of time in which a claim may be filed. A claim  
13 against the second injury fund shall be filed within [two years after the date of the injury or  
14 within one year after a claim is filed against an employer or insurer pursuant to this chapter,

15 whichever is later] **five years of the date of the filing of the claim for compensation against**  
16 **the employer.** In all other respects the limitations shall be governed by the law of civil actions  
17 other than for the recovery of real property, but the appointment of a conservator shall be deemed  
18 the termination of the legal disability from minority or disability as defined in chapter 475,  
19 RSMo. The statute of limitations contained in this section is one of [extinction and not of]  
20 repose.

287.560. 1. The division, any administrative law judge thereof or the commission[,]  
2 shall have power to issue process, subpoena witnesses, administer oaths, examine books and  
3 papers, and require the production thereof, and to cause the deposition of any witness to be taken  
4 and the costs thereof paid as other costs under this chapter. Any party shall be entitled to process  
5 to compel the attendance of witnesses and the production of books and papers, and at his own  
6 cost to take and use depositions in like manner as in civil cases in the circuit court, except that  
7 depositions may be recorded by electronic means. **If the employer or insurance carrier**  
8 **requests a deposition to be taken of an injured employee or any person claiming benefits**  
9 **as a dependent of an injured employee, the deponent is entitled to receive in addition to all**  
10 **other benefits:**

11 (1) **All reasonable expenses of transportation means and lodging incident to the**  
12 **deposition;**

13 (2) **Reimbursement for any loss of wages incurred during attendance at the**  
14 **deposition;**

15 (3) **A copy of the transcript of the deposition without cost;**

16 (4) **A reasonable allowance for attorney's fees for the deponent, if represented by**  
17 **an attorney licensed by the Missouri Bar of this state. The fee shall be discretionary with**  
18 **and, if allowed, shall be set by the administrative law judge, but shall be paid by the**  
19 **employer;**

20 (5) **A reasonable allowance for interpreter's fees for the deponent, if interpretation**  
21 **services are needed and provided by a language interpreter. The fee shall be reasonable**  
22 **as determined by the administrative law judge or director, and by the employer or insurer.**  
23 **Payment for interpreter's services shall be allowed for deposition of a non-English**  
24 **speaking injured worker, and for any other deposition-related events as permitted by the**  
25 **administrative law judge or director.**

26 2. The party electing to record a deposition by electronic means shall be responsible for  
27 the preparation and proper certification of the transcript and for maintaining a copy of the tape  
28 or other medium on which the deposition was recorded for the use of the division or any party  
29 upon request. Copies of the transcript shall be provided to all parties at a cost approved by the  
30 division. Subpoena shall extend to all parts of the state, and may be served as in civil actions in

31 the circuit court, but the costs of the service shall be as in other civil actions. Each witness shall  
32 receive the fees and mileage prescribed by law in civil cases, but the same shall not be allowed  
33 as costs to the party in whose behalf the witness was summoned unless the persons before whom  
34 the hearing is had shall certify that the testimony of the witness was necessary. All costs under  
35 this section shall be approved by the division and paid out of the state treasury from the fund for  
36 the support of the Missouri division of workers' compensation; provided, however, that if the  
37 division or the commission determines that any proceedings have been brought, prosecuted or  
38 defended without reasonable ground, it may assess the whole cost of the proceedings upon the  
39 party who so brought, prosecuted or defended them. **The whole cost of the proceedings shall**  
40 **include attorney's fees.** The division or the commission may permit a claimant to prosecute a  
41 claim as a poor person as provided by law in civil cases.

42 **3. For the purpose of this section, a "medical legal expense" means any cost and**  
43 **expense incurred by or on behalf of any party, an administrative law judge, or a court of**  
44 **competent jurisdiction. Such costs and expenses are intended to include x-rays; laboratory**  
45 **fees; diagnostic tests; medical records copies; medical evaluations, reports, and testimony;**  
46 **vocational evaluations, reports, and testimony; psychologist evaluations, reports, and**  
47 **testimony; court reporting fees; and interpreter's fees as needed to prove or disprove a**  
48 **contested claim.**

49 **4. A contested claim exists when the employer knows or reasonably should know**  
50 **that the employee is claiming entitlement to any benefit arising out of a claimed**  
51 **occupational injury, cumulative trauma, or illness, and one of the following conditions**  
52 **exist:**

53 **(1) The employer rejects liability for a claim for benefits;**

54 **(2) The employer fails to accept liability for benefits after the expiration of the time**  
55 **specified by statute within which to decide if it will contest the claim;**

56 **(3) The employer fails to respond to a demand for payment of benefits after the**  
57 **expiration of time fixed by statute for the payment thereof, or if none, then for the shortest**  
58 **of time periods otherwise fixed by law to be selected from indemnity, temporary total,**  
59 **temporary partial, permanent partial, permanent total, or death benefit compensation.**

60 **5. Cost of medical evaluations, diagnostic tests, and interpreters incidental to the**  
61 **production of a medical report do not constitute medical legal expense unless the medical**  
62 **report is capable of proving or disproving a disputed medical fact, the determination of**  
63 **which is essential to adjudication of the employee's claim for benefits. In determining**  
64 **whether the report meets the requirements of this division, the administrative law judge**  
65 **shall give full consideration to the substance as well as the form of the report as required**  
66 **by applicable statutes and regulations.**

67           **6. In accordance with the rules of practice of procedure enacted in furtherance of**  
68 **this statute, the administrative law judge, the employee, or the dependents of a deceased**  
69 **employee shall be reimbursed for the medical legal expenses, reasonably, actually, and**  
70 **necessarily incurred. The reasonableness of and necessity for incurring these expenses**  
71 **shall be determined with respect to the time when the expenses were actually incurred.**  
72 **Cost for medical evaluations, diagnostic tests, and interpreters' services incidental to the**  
73 **production of a medical report shall not be incurred earlier than the date of receipt by the**  
74 **employer, the employer's insurance carrier or, if represented, the attorney of record of all**  
75 **reports and documents required by this division.**

76           **7. Except as otherwise provided herein, no comprehensive medical legal evaluation,**  
77 **except those at the request of an employer, shall be performed during the first sixty days**  
78 **after the notice of a claim has been filed, neither the employer nor the employee shall be**  
79 **liable for any expense incurred for comprehensive medical legal evaluations performed**  
80 **within the first sixty days after notice of claim has been filed.**

81           **8. Comprehensive medical legal evaluations may be performed at any time after**  
82 **notice has been given to the employer or its insurer or attorney that an occupational injury**  
83 **or disease has been claimed.**

84           **9. Upon receipt by the employer of all reports and documents required, all medical**  
85 **legal expenses for which the employer is liable shall be paid to whom the funds and**  
86 **expenses are due as follows:**

87           **(1) Except as provided herein, within sixty days after receipt by the employer of**  
88 **each separate written billing and report, the expenses shall be paid. If payment is not**  
89 **made within such period, that portion of the billed sum that is challenged as unreasonable**  
90 **shall not be paid pending a determination by the administrative law judge as to the**  
91 **reasonableness. The contested portion unpaid shall be increased by ten percent, together**  
92 **with interest thereon at a rate of ten percent per annum retroactive to the date of receipt**  
93 **of the bill and report by the employer, upon a determination of reasonableness by the**  
94 **administrative law judge; and**

95           **(2) Where the employer, within the sixty-day period, contests the reasonableness**  
96 **and necessity for incurring the fees, services, and expenses, payment shall be made within**  
97 **twenty days of the filing of an order or award of the administrative law judge directing**  
98 **payment.**

99           **10. The employer shall notify in writing the provider of services, the employee or**  
100 **if represented, employee's attorney, if the employer contests the reasonableness or necessity**  
101 **of incurring these expenses and shall indicate the reasons therefor.**

102           **11. All charges for medical legal expenses for which the employer is liable shall be**

103 **reasonable and necessary as is determined by the administrative law judge or as by rule**  
104 **promulgated by the division.**

105 **12. If the employer contests the reasonableness of the charges it has paid, the**  
106 **employer may seek a hearing before the administrative law judge to obtain reimbursement**  
107 **of the charges.**

108 **13. No charge shall be assessed against the employee.**

2 [287.143. As a guide to the interpretation and application of sections 287.144  
3 to 287.149, sections 287.144 to 287.149 shall not be construed to require the  
employer to provide vocational rehabilitation to a severely injured employee.]