FIRST REGULAR SESSION

[PERFECTED]

HOUSE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 321

92ND GENERAL ASSEMBLY

Taken up for Perfection February 19, 2003.

House Substitute for House Committee Substitute for House Bill No. 321 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

1251L.06P

AN ACT

To repeal sections 286.020, 287.020, 287.067, 287.120, 287.210, 287.390, 287.610, 287.690, 287.715, and 287.800, RSMo, and to enact in lieu thereof eleven new sections relating to workers' compensation law.

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

Section A. Sections 286.020, 287.020, 287.067, 287.120, 287.210, 287.390, 287.610, 287.690, 287.715, and 287.800, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 286.020, 287.020, 287.067, 287.120, 287.210, 287.390, 287.610, 287.690, 287.715, 287.800, and 287.803, to read as follows:

286.020. The term of office of each member of the commission shall be six years except that when first constituted one member shall be appointed for two years, one for four years and one for six years, and thereafter all vacancies shall be filled as they occur. The terms of office of the first members of the commission shall begin on the date of their appointment which shall be within thirty days after the effective date of this chapter. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed by the governor, by and with the advice and consent of the senate, for the remainder of such term. **Every commission member appointed to serve, either as a permanent, an acting, a temporary, an interim, or as a legislative recess appointment, shall appear for confirmation before the senate within thirty days after the senate next convenes**

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 proposed language.

for regular session. Any member appointed or serving the labor and industrial relations commission without senate confirmation after said time period shall immediately resign from the commission and shall not be reappointed to the same office or position in accordance with section 51 of article IV of the Missouri Constitution. The governor may remove any member of the commission, after notice and hearing, for gross inefficiency, mental or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office, incompetence or for any offense involving moral turpitude or oppression in office.

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the motor carrier and railroad safety division of the department of economic development or by the interstate commerce commission.

2. The word "accident" as used in this chapter shall**[**, unless a different meaning is clearly indicated by the context,**]** be construed to mean an unexpected **traumatic event or unusual strain identifiable by time and place of occurrence [**or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and**]** producing at the time objective symptoms of an injury**, caused by a specific event during a single work shift**. **[**An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.**]**

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. **An injury by accident is compensable only if the accident was the dominant factor in causing the mental or physical condition or disability.** Ordinary, gradual deterioration or progressive degeneration of the body caused by aging **or by the normal activities of day-to-day living** shall not be compensable**[**, except where the deterioration or degeneration follows as an incident of employment**]**.

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

if:

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

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

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

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

(3) **This chapter shall not apply to personal health conditions of an employee which manifest themselves in the employment in which the accident is not the dominant factor in the resulting need for medical treatment.**

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

(5) "Dominant factor" shall mean the accident is the prevailing factor in relation to any other factors contributing to the resulting medical condition or disability.

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

(7) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased permanent disability. Any award of compensation shall be reduced by the amount of permanent partial disability determined to be preexisting disease or condition to cause or prolong disability or need for treatment, the resultant condition is compensable only to the extent that the compensable injury is and remains the dominant cause of the disability or need for treatment.

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

[4.**]** **(9)** "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks

after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

[5.**] 4.** Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.

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

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

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

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

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

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

2. An occupational disease is compensable **only** if **[**it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor**] the occupational exposure was the dominant factor in causing the resulting medical condition or disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living**

shall not be compensable. "Dominant factor" shall mean the occupational exposure is the prevailing factor in relation to any other factors contributing to the resulting medical condition or disability.

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

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

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

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

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

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

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury

or death, except such rights and remedies as are not provided for by this chapter.

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

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

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

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

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

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

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

The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri

law to constitute legal intoxication shall be conclusively presumed to mean the voluntary use of alcohol under such circumstances is the proximate cause of the injury.

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

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

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

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

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

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

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

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

2. The commission, the division or administrative law judge shall, when deemed necessary, appoint a duly qualified impartial physician to examine the injured employee, and any

physician so chosen, if he **or she** accepts the appointment, shall promptly make the examination requested and make a complete medical report to the commission or the division in such duplication as to provide all parties with copies thereof. The physician's fee shall be fair and reasonable, as provided in subsection 3 of section 287.140, and the fee and other reasonable costs of the impartial examination may be paid as other costs under this chapter. If all the parties shall have had reasonable access thereto, the report of the physician shall be admissible in evidence.

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

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

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

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

received from other health care providers.

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

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

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

287.390. 1. **[**Nothing in this chapter shall be construed as preventing the**]** Parties to claims hereunder **[**from entering**]** **may enter** into voluntary agreements in settlement thereof, but no agreement by an employee or his **or her** dependents to waive his **or her** rights under this

chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. **An administrative law judge, associate legal advisor, legal advisor, or the commission shall approve an agreement as valid and enforceable unless the administrative law judge, associate legal advisor, legal advisor, or the commission makes a specific finding of fact that the agreement is manifestly unjust.**

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

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

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

287.610. 1. The division may**, with the advice and consent of the senate,** appoint such number of administrative law judges as it may find necessary, but not exceeding twenty-five in number beginning January 1, 1999, with one additional appointment authorized as of July 1, 2000, and one additional appointment authorized in each succeeding year thereafter until and including the year 2004, for a maximum of thirty authorized administrative law judges. Appropriations for any additional appointment shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. **Beginning July 1, 2004, the term of office of each administrative law judge shall be four years. The director of the division of workers' compensation shall publish and maintain on the division's web site the appointment dates or initial dates of services for all administrative law judges. As of July 1, 2004, the eight administrative law judges most senior in service shall have a term of one year expiring on June 30, 2005, the subsequent eight administrative law judges most senior**

in service shall have a term of two years expiring on June 30, 2006, the subsequent eight administrative law judges most senior in service shall have a term of three years expiring on June 30, 2007, and the remaining administrative law judges in office on July 1, 2004, shall have a term of four years expiring on June 30, 2008. Any administrative law judge appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed with the advice and consent of the senate for the remainder of such term. Any member appointed while the general assembly is not in session must appear for confirmation before the senate within thirty days after the senate next convenes for regular session or such appointment is rendered invalid. Administrative law judges may be eligible for reappointment; however, for continuous service such person must be reconfirmed by the senate prior to the expiration of the original term. Any administrative law judge may be discharged or removed only by the governor pursuant to an evaluation and recommendation by the administrative law judge review committee, hereinafter referred to as "the committee", of the judge's conduct, performance and productivity.

2. The division shall require and perform annual evaluations of an administrative law judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule. The division, by rule, shall establish the written standards on or before January 1, 1999.

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

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

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

3. The administrative law judge review committee shall be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one employer representative, neither of whom shall have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. The employee representative and employer representative shall have a working knowledge of

workers' compensation. The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission and shall not serve on any two consecutive reviews conducted by the committee. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. The committee shall conduct a hearing as part of any review of a referral or appeal made according to subsection 2 of this section.

4. The committee shall determine within thirty days whether an investigation shall be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The committee shall make a final referral to the governor pursuant to subsection 1 of this section within two hundred seventy days of the receipt of a referral or appeal.

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

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

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

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

287.690. 1. **[**Prior to December 31, 1993,**]** For the purpose of providing for the expense of administering this chapter and for the purpose set out in subsection 2 of this section, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in this state at the rate of two percent in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, **[**1993**]** **2003**, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, **[**1994**]** **2004**. If the balance of the fund estimated to be on hand on December thirty-first of the year each tax rate determination is made is less than one hundred **[**ten**]** percent of the previous year's expenses plus any additional revenue required due to new statutory requirements given to the division by the general assembly, then the director shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed and collected as herein provided. **For any year in which collections from the maximum two percent tax rate are insufficient to meet the fund balance requirement of one hundred percent of the previous year's expenses, an audit shall be conducted by the state auditor of the division of workers' compensation. A report of**

such audit shall be submitted to the speaker of the house of representatives and the president pro tempore of the senate upon its completion. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following year. Net premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross assessments less canceled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

2. After January 1, 1994, the director of the division shall make one or more loans to the Missouri employers mutual insurance company in an amount not to exceed an aggregate amount of five million dollars from the fund maintained to administer this chapter for start-up funding and initial capitalization of the company. The board of the company shall make application to the director for the loans, stating the amount to be loaned to the company. The loans shall be for a term of five years and, at the time the application for such loans is approved by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758, RSMo.

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

2. **[**Prior to December 31, 1993, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the ensuing calendar year, and shall calculate the total amount of the annual surcharge to be imposed during

the ensuing calendar year upon all workers' compensation holders and authorized self-insurers. The amount of the annual surcharge to be imposed upon all policyholders and self-insurers shall equal the moneys estimated by the director of the division of workers' compensation to be payable from the second injury fund during the calendar year for which the annual surcharge is to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.**]** Beginning October 31, **[**1993**]** **2003**, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the ensuing calendar year and shall calculate the total amount of the annual surcharge to be imposed **during the ensuing calendar year** upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the ensuing calendar year commencing with the calendar year beginning on January 1, **[**1994**]** **2004**, shall be set at and calculated against a percentage**, not to exceed three percent,** of the policyholder's or self-insured's workers' compensation net deposits, net premiums**,** or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred **[**ten**]** percent of the moneys projected to be paid from the second injury fund in the ensuing calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. **For any year in which collections from the maximum three percent tax rate are insufficient to meet the fund balance requirement of one hundred percent of the previous year's expenses, an audit shall be conducted by the state auditor of the division of workers' compensation. A report of such audit shall be submitted to the speaker of the house of representatives and the president pro tempore of the senate upon its completion.** The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance.

The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders. **If the director of the division of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any year for the ensuing year, any increase in the surcharge ultimately set by the director shall not be effective for any calendar quarter beginning less than sixty days from the date the director makes such determination.**

5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer fails to make timely transfer to the director of revenue of surcharges actually collected from policyholders, as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties assessed under this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.

287.800. All of the provisions of this chapter shall be **[**liberally**]** **impartially** construed with a view to the public welfare, **[**and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.**]** **in order to, in all cases arising thereunder, provide fairness for both employees and employers and to promote ever-increasing economic vitality and job retention for this state.**

287.803. 1. An employee may elect to reject the provisions of this chapter by reason such employee is a member of a religious sect that is adherent of established tenets or teaching whereby members are conscientiously opposed to the acceptance of the benefits of any public or private insurance which makes payments toward the costs of, or provided services for medical bills including benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. 301 et seq. The employee shall submit a written waiver of all benefits pursuant to this chapter and an affidavit that he or she is a member of said religious sect, attesting to the rejection of the benefits of public or private insurance.

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

include a statement agreeing to a prohibition of future civil action relating to an injury arising during said employment.

3. An exception granted in regards to a specific employee shall continue to be valid until such employee rescinds the prior rejection of coverage or the employee or sect ceases to meet the requirements of subsection 1 of this section.

4. Any rescission shall be prospective in nature and shall entitle the employee only to such benefits that accrue on or after the date the rescission form is received by the insurance company.