

FIRST REGULAR SESSION

HOUSE BILL NO. 148

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HUNTER (Sponsor), WILSON (130), RUESTMAN, EMERY, ERVIN, YATES, GUEST, PHILLIPS, CUNNINGHAM (86), PORTWOOD, ICET, DETHROW, DAVIS, BEARDEN, BEHNEN, WILSON (119), WOOD, HOBBS, RICHARD, MOORE, SATER, BIVINS, SANDER, ROARK, DEMPSEY, JETTON, DIXON, GOODMAN AND NIEVES (Co-sponsors).

Pre-filed December 29, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0343L.02I

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 ten 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,
2 287.690, 287.715, and 287.800, RSMo, are repealed and ten new sections enacted in lieu thereof,
3 to be known as sections 286.020, 287.020, 287.067, 287.120, 287.210, 287.390, 287.610,
4 287.690, 287.715, and 287.800, to read as follows:

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

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

11 **for regular session. Any member appointed or serving the labor and industrial relations**
12 **commission without senate confirmation after said time period shall immediately resign**
13 **from the commission and shall not be reappointed to the same office or position in**
14 **accordance with section 51 of article IV of the Missouri Constitution.** The governor may
15 remove any member of the commission, after notice and hearing, for gross inefficiency, mental
16 or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office,
17 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
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,
3 express or implied, oral or written, or under any appointment or election, including executive
4 officers of corporations. Any reference to any employee who has been injured shall, when the
5 employee is dead, also include his dependents, and other persons to whom compensation may
6 be payable. The word "employee" shall also include all minors who work for an employer,
7 whether or not such minors are employed in violation of law, and all such minors are hereby
8 made of full age for all purposes under, in connection with, or arising out of this chapter. The
9 word "employee" shall not include an individual who is the owner and operator of a motor
10 vehicle which is leased or contracted with a driver to a for-hire common or contract motor
11 vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041,
12 RSMo, or operating under a certificate issued by the motor carrier and railroad safety division
13 of the department of economic development or by the interstate commerce commission.

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

22 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
23 out of and in the course of employment. The injury must be incidental to and not independent
24 of the relation of employer and employee. **An injury by accident is compensable only if the**
25 **accident was the dominant factor in causing the mental or physical condition or disability.**
26 Ordinary, gradual deterioration or progressive degeneration of the body caused by aging **or by**
27 **the normal activities of day-to-day living** shall not be compensable[, except where the
28 deterioration or degeneration follows as an incident of employment].

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

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

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

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

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

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

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

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

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

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

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

64 [4.] (9) "Death" when mentioned as a basis for the right to compensation means only
65 death resulting from such violence and its resultant effects occurring within three hundred weeks
66 after the accident; except that in cases of occupational disease, the limitation of three hundred
67 weeks shall not be applicable.

68 [5.] 4. Without otherwise affecting either the meaning or interpretation of the abridged
69 clause, "personal injuries arising out of and in the course of such employment", it is hereby
70 declared not to cover workers except while engaged in or about the premises where their duties
71 are being performed, or where their services require their presence as a part of such service.

72 [6.] 5. A person who is employed by the same employer for more than five and one-half
73 consecutive work days shall for the purpose of this chapter be considered an "employee".

74 [7.] 6. The term "total disability" as used in this chapter shall mean inability to return to
75 any employment and not merely mean inability to return to the employment in which the
76 employee was engaged at the time of the accident.

77 [8.] 7. As used in this chapter and all acts amendatory thereof, the term "commission"
78 shall hereafter be construed as meaning and referring exclusively to the labor and industrial
79 relations commission of Missouri, and the term "director" shall hereafter be construed as
80 meaning the director of the department of insurance of the state of Missouri or such agency of
81 government as shall exercise the powers and duties now conferred and imposed upon the
82 department of insurance of the state of Missouri.

83 [9.] 8. The term "division" as used in this chapter means the division of workers'
84 compensation of the department of labor and industrial relations of the state of Missouri.

85 [10.] 9. For the purposes of this chapter, the term "minor" means a person who has not
86 attained the age of eighteen years; except that, for the purpose of computing the compensation
87 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,
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 **only** if [it is clearly work related and meets
10 the 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] **the occupational exposure was the dominant factor in causing the**

13 **resulting medical condition or disability. Ordinary, gradual deterioration or progressive**
14 **degeneration of the body caused by aging or by the normal activities of day-to-day living**
15 **shall not be compensable. "Dominant factor" shall mean the occupational exposure is the**
16 **prevailing factor in relation to any other factors contributing to the resulting medical**
17 **condition or disability.**

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

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

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

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

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

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

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

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

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

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

26 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
27 relating to **a drug-free workplace** or the use of alcohol or nonprescribed controlled drugs in the
28 workplace, which rule or policy has been kept posted in a conspicuous place on the employer's
29 premises, the compensation and death benefit provided for herein shall be [reduced fifteen
30 percent] **forfeited** if the injury was sustained in conjunction with the use of alcohol or
31 nonprescribed controlled drugs; provided[, that it is shown that the employee had actual
32 knowledge of the rules or policy so adopted by the employer and, provided further] that the
33 employer had, prior to the injury, made a diligent effort to inform the employee of the
34 requirement to obey any reasonable rule or policy adopted by the employer.

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

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

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

45

46 **The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri**
47 **law to constitute legal intoxication shall be conclusively presumed to mean the voluntary**
48 **use of alcohol under such circumstances is the proximate cause of the injury.**

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

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

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

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

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

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

69 10. The ability of a firefighter to receive benefits for psychological stress under section
70 287.067 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
2 thereafter during disability submit to reasonable medical examination at the request of the
3 employer, his **or her** insurer, **the state if there is a second injury claim**, the commission, the
4 division or an administrative law judge, the time and place of which shall be fixed with due
5 regard to the convenience of the employee and his **or her** physical condition and ability to attend.
6 The employee may have his **or her** own physician present, and if the employee refuses to submit
7 to the examination, or in any way obstructs it, his **or her** right to compensation shall be forfeited

8 during such period unless in the opinion of the commission the circumstances justify the refusal
9 or obstruction.

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

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

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

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

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

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

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

79 9. The division or the commission may in its discretion in extraordinary cases order a
80 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
2 claims hereunder [from entering] **may enter** into voluntary agreements in settlement thereof, but
3 no agreement by an employee or his **or her** dependents to waive his **or her** rights under this
4 chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or
5 claim for compensation under this chapter be valid until approved by an administrative law judge
6 or the commission, nor shall an administrative law judge or the commission approve any
7 settlement which is not in accordance with the rights of the parties as given in this chapter. No
8 such agreement shall be valid unless made after seven days from the date of the injury or death.
9 **An administrative law judge, associate legal advisor, legal advisor, or the commission shall**
10 **approve an agreement as valid and enforceable unless the administrative law judge,**
11 **associate legal advisor, legal advisor, or the commission makes a specific finding of fact**
12 **that the agreement is manifestly unjust.**

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

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

21 4. A minor dependent, by parent or conservator, may compromise disputes and may enter
22 into a compromise settlement agreement, and upon approval by an administrative law judge or
23 the commission the settlement agreement shall have the same force and effect as though the
24 minor had been an adult. The payment of compensation by the employer in accordance with the
25 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
2 number of administrative law judges as it may find necessary, but not exceeding twenty-five in
3 number beginning January 1, 1999, with one additional appointment authorized as of July 1,
4 2000, and one additional appointment authorized in each succeeding year thereafter until and
5 including the year 2004, for a maximum of thirty authorized administrative law judges.
6 Appropriations for any additional appointment shall be based upon necessity, measured by the
7 requirements and needs of each division office. Administrative law judges shall be duly licensed
8 lawyers under the laws of this state. Administrative law judges shall not practice law or do law
9 business and shall devote their whole time to the duties of their office. **Beginning July 1, 2006,**

10 **the term of office of each administrative law judge shall be four years. The director of the**
11 **division of workers' compensation shall publish and maintain on the division's web site the**
12 **appointment dates or initial dates of services for all administrative law judges. As of July**
13 **1, 2006, the eight administrative law judges most senior in service shall have a term of one**
14 **year expiring on June 30, 2007, the subsequent eight administrative law judges most senior**
15 **in service shall have a term of two years expiring on June 30, 2008, the subsequent eight**
16 **administrative law judges most senior in service shall have a term of three years expiring**
17 **on June 30, 2009, and the remaining administrative law judges in office on July 1, 2006,**
18 **shall have a term of four years expiring on June 30, 2010. Any administrative law judge**
19 **appointed to fill a vacancy occurring prior to the expiration of the term for which the**
20 **member's predecessor was appointed, shall be appointed with the advice and consent of**
21 **the senate for the remainder of such term. Any member appointed while the general**
22 **assembly is not in session shall appear for confirmation before the senate within thirty days**
23 **after the senate next convenes for regular session or such appointment is rendered invalid.**
24 **Administrative law judges may be eligible for reappointment; however, such continuous**
25 **service shall not exceed a total of eight years and such person shall be reconfirmed by the**
26 **senate prior to the expiration of the original term. Any administrative law judge may be**
27 discharged or removed only by the governor pursuant to an evaluation and recommendation by
28 the administrative law judge review committee, hereinafter referred to as "the committee", of the
29 judge's conduct, performance and productivity.

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

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

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

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

44 3. The administrative law judge review committee shall be composed of one
45 administrative law judge, who shall act as a peer judge on the committee and shall be domiciled

46 in a division office other than that of the judge being reviewed, one employee representative and
47 one employer representative, neither of whom shall have any direct or indirect employment or
48 financial connection with a workers' compensation insurance company, claims adjustment
49 company, health care provider nor be a practicing workers' compensation attorney. The
50 employee representative and employer representative shall have a working knowledge of
51 workers' compensation. The employee and employer representative shall serve for four-year
52 staggered terms and they shall be appointed by the governor. The initial employee representative
53 shall be appointed for a two-year term. The administrative law judge who acts as a peer judge
54 shall be appointed by the chairman of the labor and industrial relations commission and shall not
55 serve on any two consecutive reviews conducted by the committee. Chairmanship of the
56 committee shall rotate between the employee representative and the employer representative
57 every other year. Staffing for the administrative review committee shall be provided, as needed,
58 by the director of the department of labor and industrial relations and shall be funded from the
59 workers' compensation fund. The committee shall conduct a hearing as part of any review of a
60 referral or appeal made according to subsection 2 of this section.

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

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

82 the same manner as provided elsewhere in this chapter for awards by the labor and industrial
83 relations commission, and shall be subject to review as provided by section 287.480.

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

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

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

287.690. 1. [Prior to December 31, 1993,] For the purpose of providing for the expense
2 of administering this chapter and for the purpose set out in subsection 2 of this section, every
3 person, partnership, association, corporation, whether organized under the laws of this or any
4 other state or country, the state of Missouri, including any of its departments, divisions, agencies,
5 commissions, and boards or any political subdivisions of the state who self-insure or hold
6 themselves out to be any part self-insured, company, mutual company, the parties to any
7 interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring
8 employers in this state against liability for personal injuries to their employees, or for death
9 caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net
10 deposits, net premiums or net assessments received, whether in cash or notes in this state, or on
11 account of business done in this state, for such insurance in this state at the rate of two percent
12 in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount
13 of taxes shall be assessed and collected as herein provided. Beginning October 31, [1993] **2005**,
14 and every year thereafter, the director of the division of workers' compensation shall estimate the
15 amount of revenue required to administer this chapter and the director shall determine the rate
16 of tax to be paid in the following calendar year pursuant to this section commencing with the
17 calendar year beginning on January 1, [1994] **2006**. If the balance of the fund estimated to be
18 on hand on December thirty-first of the year each tax rate determination is made is less than one
19 hundred [ten] percent of the previous year's expenses plus any additional revenue required due
20 to new statutory requirements given to the division by the general assembly, then the director
21 shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net

22 premiums or net assessments, rounded up to the nearest one-half of a percentage point, which
23 amount of taxes shall be assessed and collected as herein provided. **For any year in which**
24 **collections from the maximum two percent tax rate are insufficient to meet the fund**
25 **balance requirement of one hundred percent of the previous year's expenses, an audit shall**
26 **be conducted by the state auditor of the division of workers' compensation. A report of**
27 **such audit shall be submitted to the speaker of the house of representatives and the**
28 **president pro tempore of the senate upon its completion.** The net premium equivalent for
29 individual self-insured employers and any group of political subdivisions of this state qualified
30 to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo,
31 shall be based on average rate classifications calculated by the department of insurance as taken
32 from premium rates filed by the twenty insurance companies providing the greatest volume of
33 workers' compensation insurance coverage in this state. For employers qualified to self-insure
34 their liability pursuant to this chapter, the rates filed by such group of employers in accordance
35 with subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required
36 to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the
37 division of workers' compensation within ten calendar days of the date of the determination of
38 the rate of tax to be imposed for the following year. Net premiums, net deposits or net
39 assessments are defined as gross premiums, gross deposits or gross assessments less canceled
40 or returned premiums, premium deposits or assessments and less dividends or savings, actually
41 paid or credited.

42 2. After January 1, 1994, the director of the division shall make one or more loans to the
43 Missouri employers mutual insurance company in an amount not to exceed an aggregate amount
44 of five million dollars from the fund maintained to administer this chapter for start-up funding
45 and initial capitalization of the company. The board of the company shall make application to
46 the director for the loans, stating the amount to be loaned to the company. The loans shall be for
47 a term of five years and, at the time the application for such loans is approved by the director,
48 shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by
49 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
2 authorized self-insurer, and every workers' compensation policyholder insured pursuant to the
3 provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with
4 the provisions of this section. The annual surcharge imposed under this section shall apply to
5 all workers' compensation insurance policies and self-insurance coverages which are written or
6 renewed on or after April 26, 1988, including the state of Missouri, including any of its
7 departments, divisions, agencies, commissions, and boards or any political subdivisions of the
8 state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any

9 law to the contrary, the surcharge imposed pursuant to this section shall not apply to any
10 reinsurance or retrocessional transaction.

11 2. [Prior to December 31, 1993, the director of the division of workers' compensation
12 shall estimate the amount of benefits payable from the second injury fund during the ensuing
13 calendar year, and shall calculate the total amount of the annual surcharge to be imposed during
14 the ensuing calendar year upon all workers' compensation holders and authorized self-insurers.
15 The amount of the annual surcharge to be imposed upon all policyholders and self-insurers shall
16 equal the moneys estimated by the director of the division of workers' compensation to be
17 payable from the second injury fund during the calendar year for which the annual surcharge is
18 to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or
19 authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.]
20 Beginning October 31, [1993] **2005**, and each year thereafter, the director of the division of
21 workers' compensation shall estimate the amount of benefits payable from the second injury fund
22 during the ensuing calendar year and shall calculate the total amount of the annual surcharge to
23 be imposed **during the ensuing calendar year** upon all workers' compensation policyholders
24 and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon
25 each policyholder and self-insured for the ensuing calendar year commencing with the calendar
26 year beginning on January 1, [1994] **2006**, shall be set at and calculated against a percentage, **not**
27 **to exceed three percent**, of the policyholder's or self-insured's workers' compensation net
28 deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest
29 one-half of a percentage point, that shall generate, as nearly as possible, one hundred [ten]
30 percent of the moneys projected to be paid from the second injury fund in the ensuing calendar
31 year, less any moneys contained in the fund at the end of the previous calendar year. All
32 policyholders and self-insurers shall be notified by the division of workers' compensation within
33 ten calendar days of the determination of the surcharge percent to be imposed for, and paid in,
34 the following calendar year. **For any year in which collections from the maximum three**
35 **percent tax rate are insufficient to meet the fund balance requirement of one hundred**
36 **percent of the previous year's expenses, an audit shall be conducted by the state auditor**
37 **of the division of workers' compensation. A report of such audit shall be submitted to the**
38 **speaker of the house of representatives and the president pro tempore of the senate upon**
39 **its completion.** The net premium equivalent for individual self-insured employers and any
40 group of political subdivisions of this state qualified to self-insure their liability pursuant to this
41 chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications
42 calculated by the department of insurance as taken from premium rates filed by the twenty
43 insurance companies providing the greatest volume of workers' compensation insurance coverage
44 in this state. For employers qualified to self-insure their liability pursuant to this chapter, the

45 rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall
46 be the net premium equivalent. The director may advance funds from the workers' compensation
47 fund to the second injury fund if surcharge collections prove to be insufficient. Any funds
48 advanced from the workers' compensation fund to the second injury fund must be reimbursed
49 by the second injury fund no later than December thirty-first of the year following the advance.
50 The surcharge shall be collected from policyholders by each insurer at the same time and in the
51 same manner that the premium is collected, but no insurer or its agent shall be entitled to any
52 portion of the surcharge as a fee or commission for its collection. The surcharge is not subject
53 to any taxes, licenses or fees.

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

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

63 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer
64 fails to make timely transfer to the director of revenue of surcharges actually collected from
65 policyholders, as required by this section, a penalty of one-half of one percent of the surcharge
66 unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured or insurer.
67 Penalties assessed under this subsection shall be collected in a civil action by a summary
68 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
2 with a view to the public welfare, [and a substantial compliance therewith shall be sufficient to
3 give effect to rules, regulations, requirements, awards, orders or decisions of the division and the
4 commission, and they shall not be declared inoperative, illegal or void for any omission of a
5 technical nature in respect thereto.] **in order to, in all cases arising thereunder, provide
6 fairness for both employees and employers and to promote ever-increasing economic
7 vitality and job retention for this state.**