

FIRST REGULAR SESSION

HOUSE BILL NO. 1227

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT.

2341H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.223, 287.240, 287.300, 287.420, 287.480, and 287.780, RSMo, and to enact in lieu thereof thirteen new sections relating to workers' compensation.

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

Section A. Sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.223, 287.240, 287.300, 287.420, 287.480, and 287.780, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 287.020, 287.063, 287.067, 287.120, 287.127, 287.140, 287.150, 287.200, 287.240, 287.300, 287.420, 287.480, and 287.780, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his **or her** dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subdivision (42) of section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States

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.

14 Department of Transportation, or any of its subagencies. The word "employee" also shall not
15 include any person performing services for board, lodging, aid, or sustenance received from any
16 religious, charitable, or relief organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 11. For the purposes of this chapter, "occupational diseases due to toxic exposure" shall
83 only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis,

84 bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia,
85 and myelodysplastic syndrome.

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

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

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

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

10 2. An injury or death by occupational disease is compensable only if the occupational
11 exposure was the prevailing factor in causing both the resulting medical condition and disability.
12 The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
13 both the resulting medical condition and disability. Ordinary, gradual deterioration, or
14 progressive degeneration of the body caused by aging or by the normal activities of day-to-day
15 living shall not be compensable.

16 3. An injury due to repetitive motion is recognized as an occupational disease for
17 purposes of this chapter. An occupational disease due to repetitive motion is compensable only
18 if the occupational exposure was the prevailing factor in causing both the resulting medical
19 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation
20 to any other factor, causing both the resulting medical condition and disability. Ordinary,

21 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal
22 activities of day-to-day living shall not be compensable. **The injury shall arise out of and in**
23 **the course of employment as described in subsection 3 of section 287.020.**

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

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

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

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

44 8. With regard to occupational disease due to repetitive motion, if the exposure to the
45 repetitive motion which is found to be the cause of the injury is for a period of less than three
46 months and the evidence demonstrates that the exposure to the repetitive motion with the
47 immediate prior employer was the prevailing factor in causing the injury, the prior employer
48 shall be liable for such occupational disease.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for
3 personal injury or death of the employee by accident or occupational disease arising out of and
4 in the course of the employee's employment. Any employee of such employer shall not be liable
5 for any injury or death for which compensation is recoverable under this chapter and every
6 employer and employees of such employer shall be released from all other liability whatsoever,
7 whether to the employee or any other person, except that an employee shall not be released from
8 liability for injury or death if the employee engaged in an affirmative negligent act that

9 purposefully and dangerously caused or increased the risk of injury. The term "accident" as used
10 in this section shall include, but not be limited to, injury or death of the employee caused by the
11 unprovoked violence or assault against the employee by any person.

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

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

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

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

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

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

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

45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

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

52 ~~—— (1) The employee was directly ordered by the employer to participate in such recreational~~
53 ~~activity or program;~~

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

56 ~~—— (3)]~~ the injury from such recreational activity or program occurs on the employer's
57 premises due to an unsafe condition and the employer had actual knowledge of the employee's
58 participation in the recreational activity or program and of the unsafe condition of the premises
59 and failed to either curtail the recreational activity or program or cure the unsafe condition.

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

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

67 10. The ability of a firefighter to receive benefits for psychological stress under section
68 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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

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

8 (2) That employees must report all injuries immediately to the employer by advising the
9 employer personally, the employer's designated individual or the employee's immediate boss,
10 supervisor or foreman and that the employee may lose the right to receive compensation if the
11 injury or illness is not reported within thirty days or in the case of occupational illness or disease,
12 within thirty days of [the time he or she is reasonably aware of work relatedness of the injury or

13 ~~illness~~ **when medically advised of the contraction of an occupational disease**; employees
14 who fail to notify their employer within thirty days may jeopardize their ability to receive
15 compensation, and any other benefits under this chapter;

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

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

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

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

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

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

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. If the employee desires, he **or she** shall have the right to select his **or her** own
6 physician, surgeon, or other such requirement at his **or her** own expense. Where the
7 requirements are furnished by a public hospital or other institution, payment therefor shall be
8 made to the proper authorities. Regardless of whether the health care provider is selected by the
9 employer or is selected by the employee at the employee's expense, the health care provider shall
10 have the affirmative duty to communicate fully with the employee regarding the nature of the
11 employee's injury and recommended treatment exclusive of any evaluation for a permanent
12 disability rating. Failure to perform such duty to communicate shall constitute a disciplinary
13 violation by the provider subject to the provisions of chapter 620. When an employee is required
14 to submit to medical examinations or necessary medical treatment at a place outside of the local

15 or metropolitan area from the employee's principal place of employment, the employer or its
16 insurer shall advance or reimburse the employee for all necessary and reasonable expenses;
17 except that an injured employee who resides outside the state of Missouri and who is employed
18 by an employer located in Missouri shall have the option of selecting the location of services
19 provided in this section either at a location within one hundred miles of the injured employee's
20 residence, place of injury or place of hire by the employer. The choice of provider within the
21 location selected shall continue to be made by the employer. In case of a medical examination
22 if a dispute arises as to what expenses shall be paid by the employer, the matter shall be
23 presented to the legal advisor, the administrative law judge or the commission, who shall set the
24 sum to be paid and same shall be paid by the employer prior to the medical examination. In no
25 event, however, shall the employer or its insurer be required to pay transportation costs for a
26 greater distance than two hundred fifty miles each way from place of treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (1) The patient;

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

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

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

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

97 13. (1) No hospital, physician or other health care provider, other than a hospital,
98 physician or health care provider selected by the employee at his **or her** own expense pursuant
99 to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
100 services rendered to an employee due to a work-related injury or report to any credit reporting
101 agency any failure of the employee to make such payment, when an injury covered by this
102 chapter has occurred and such hospital, physician or health care provider has received actual
103 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
104 shall be deemed received by the hospital, physician or health care provider five days after
105 mailing by certified mail by the employer or insurer to the hospital, physician or health care
106 provider.

107 (2) The notice shall include:

108 (a) The name of the employer;

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

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

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

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

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

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

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

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

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

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

9 2. When a third person is liable for the death of an employee and compensation is paid
10 or payable under this chapter, and recovery is had by a dependent under this chapter either by
11 judgment or settlement for the wrongful death of the employee, the employer shall have a
12 subrogation lien on any recovery and shall receive or have credit for sums paid or payable under
13 this chapter to any of the dependents of the deceased employee to the extent of the settlement or

14 recovery by such dependents for the wrongful death. Recovery by the employer and credit for
15 future installments shall be computed using the provisions of subsection 3 of this section relating
16 to comparative fault of the employee.

17 3. Whenever recovery against the third person is effected by the employee or his **or her**
18 dependents, the employer shall pay from his **or her** share of the recovery a proportionate share
19 of the expenses of the recovery, including a reasonable attorney fee. After the expenses and
20 attorney fee have been paid, the balance of the recovery shall be apportioned between the
21 employer and the employee or his **or her** dependents in the same ratio that the amount due the
22 employer bears to the total amount recovered if there is no finding of comparative fault on the
23 part of the employee, or the total damages determined by the trier of fact if there is a finding of
24 comparative fault on the part of the employee. Notwithstanding the foregoing provision, the
25 balance of the recovery may be divided between the employer and the employee or his **or her**
26 dependents as they may otherwise agree. Any part of the recovery found to be due to the
27 employer, the employee or his **or her** dependents shall be paid forthwith and any part of the
28 recovery paid to the employee or his **or her** dependents under this section shall be treated by
29 them as an advance payment by the employer on account of any future installments of
30 compensation in the following manner:

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

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

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

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

49 6. Any provision in any contract or subcontract, where one party is an employer in the

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

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

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

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

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

20 wage, as such wage is determined by the division of employment security, as of the July first
21 immediately preceding the date of injury;

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

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

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

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

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

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

54 ~~(1) Notwithstanding any provision of law to the contrary, such amount as due to the~~
55 ~~employee during said employee's life as provided for under this chapter for an award of~~

56 permanent total disability and death, except such amount shall only be paid when benefits under
57 subdivisions (2) and (3) of this subsection have been exhausted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (e) If the injury which caused the death occurred on or after September 28, 1981, the
52 weekly compensation shall in no event be less than forty dollars per week;

53 (3) ~~[If there are partial dependents, and no total dependents, a part of the death benefit~~
54 ~~herein provided in the case of total dependents, determined by the proportion of his contributions~~
55 ~~to all partial dependents by the employee at the time of the injury, shall be paid by the employer~~
56 ~~to each of the dependents proportionately];~~

57 ~~————(4)] The word "dependent" as used in this chapter shall [be construed to] mean [a relative~~
58 ~~by blood or marriage of a deceased employee, who is actually dependent for support, in whole~~
59 ~~or in part, upon his or her wages at the time of the injury. The following persons shall be~~
60 ~~conclusively presumed to be totally dependent for support upon a deceased employee, and any~~
61 ~~death benefit shall be payable to them to the exclusion of other total dependents];~~

62 (a) A wife upon a husband with whom she lives or who is legally liable for her support,
63 and a husband upon a wife with whom he lives or who is legally liable for his support; provided
64 that on the death or remarriage of a widow or widower, the death benefit shall cease unless there
65 be other total dependents entitled to any death benefits under this chapter. In the event of
66 remarriage, a lump sum payment equal in amount to the benefits due for a period of two years
67 shall be paid to the widow or widower. Thereupon the periodic death benefits shall cease unless
68 there are other ~~[total]~~ dependents entitled to any death benefit under this chapter, in which event

69 the periodic benefits to which such widow or widower would have been entitled had he or she
70 not died or remarried shall be divided among such other ~~[total]~~ dependents and paid to them
71 during their period of entitlement under this chapter; **or**

72 (b) A natural, posthumous, or adopted child or children, whether legitimate or
73 illegitimate, under the age of eighteen years, or over that age if physically or mentally
74 incapacitated from wage earning, upon the parent legally liable for the support or with whom he,
75 she, or they are living at the time of the death of the parent. In case there is a wife or a husband
76 mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and
77 a child or more than one child thus dependent, the death benefit shall be divided among them in
78 such proportion as may be determined by the commission after considering their ages and other
79 facts bearing on the dependency. In all other cases questions of ~~[total or partial]~~ **the degree of**
80 dependency shall be determined in accordance with the facts at the time of the injury, and in such
81 other cases if there is more than one person wholly dependent the death benefit shall be divided
82 equally among them. The payment of death benefits to a child or other dependent as provided
83 in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or
84 becomes physically and mentally capable of wage earning over that age, or until twenty-two
85 years of age if the child of the deceased is in attendance and remains as a full-time student in any
86 accredited educational institution, or if at eighteen years of age the dependent child is a member
87 of the Armed Forces of the United States on active duty; provided, however, that such dependent
88 child shall be entitled to compensation during four years of full-time attendance at a fully
89 accredited educational institution to commence prior to twenty-three years of age and
90 immediately upon cessation of his **or her** active duty in the Armed Forces, unless there are other
91 ~~[total]~~ dependents entitled to the death benefit under this chapter;

92 ~~[(5)]~~ (4) The division or the commission may, in its discretion, order or award the share
93 of compensation of any such child to be paid to the parent, grandparent, or other adult next of
94 kin or conservator of the child for the latter's support, maintenance and education, which order
95 or award upon notice to the parties may be modified from time to time by the commission in its
96 discretion with respect to the person to whom shall be paid the amount of the order or award
97 remaining unpaid at the time of the modification;

98 ~~[(6)]~~ (5) The payments of compensation by the employer in accordance with the order
99 or award of the division or the commission shall discharge the employer from all further
100 obligations as to the compensation;

101 ~~[(7)]~~ (6) All death benefits in this chapter shall be paid in installments in the same
102 manner as provided for disability compensation;

103 ~~[(8)]~~ (7) Every employer shall keep a record of the correct names and addresses of the
104 dependents of each of his **or her** employees, and upon the death of an employee by accident

105 arising out of and in the course of his **or her** employment shall so far as possible immediately
106 furnish the division with such names and addresses;

107 ~~(9)~~ **(8)** Dependents receiving death benefits under the provisions of this chapter shall
108 annually report to the division as to marital status in the case of a widow or widower or age and
109 physical or mental condition of a dependent child. The division shall provide forms for the
110 making of such reports.

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

287.420. No proceedings for compensation for any accident under this chapter shall be
2 maintained unless written notice of the time, place and nature of the injury, and the name and
3 address of the person injured, has been given to the employer no later than thirty days after the
4 accident, unless the employer was not prejudiced by failure to receive the notice. No
5 proceedings for compensation for any occupational disease or repetitive trauma under this
6 chapter shall be maintained unless written notice of the time, place, and nature of the injury, and
7 the name and address of the person injured, has been given to the employer no later than thirty
8 days after ~~the diagnosis of the condition~~ **being medically advised of an occupational disease**
9 unless the employee can prove the employer was not prejudiced by failure to receive the notice.

287.480. 1. If an application for review is made to the commission within twenty days
2 from the date of the award **by any party, all parties to the case are automatically retained as**
3 **a party or parties to the appeal, and** the full commission, if the first hearing was not held
4 before the full commission, shall review the evidence, or, if considered advisable, as soon as
5 practicable hear the parties at issue, their representatives and witnesses and shall make an award

6 and file it in like manner as specified in section 287.470. Any notice of appeal, application or
 7 other paper required under this law to be filed with the division or the commission shall, when
 8 mailed to or transmitted by electronic facsimile meeting the requirements of the division and
 9 received by the division or the commission, be deemed to be filed as of the date endorsed by the
 10 United States post office on the envelope or container in which such paper is received, or the
 11 date received if filed by facsimile. In instances where the last day for the filing of any such paper
 12 falls on a Sunday or legal holiday, the filing shall be deemed timely if accomplished on the next
 13 day subsequent which is neither a Sunday or a legal holiday. When filing by electronic facsimile
 14 meeting the requirements of the division, the parties shall, on the same date as the facsimile
 15 transmission, mail by the United States mail the original and the requisite number of copies to
 16 the commission.

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

287.780. No employer or agent shall discharge or ~~in any way~~ discriminate against any
 2 employee for exercising any of his **or her** rights under this chapter **when the exercising of such**
 3 **rights is the motivating factor in the discharge or discrimination.** Any employee who has
 4 been discharged or discriminated against shall have a civil action for damages against his **or her**
 5 employer.

~~287.223. 1. There is hereby created the "Missouri Mesothelioma Risk
 2 Management Fund", which shall be a body corporate and politic. The board of
 3 trustees of this fund shall have the powers and duties specified in this section and
 4 such other powers as may be necessary or proper to enable it, its officers,
 5 employees and agents to carry out fully and effectively all the purposes of this
 6 section.~~

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

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

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

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

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

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

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

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

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

43 ~~7. All staff for the fund shall be provided by the department of labor~~
44 ~~except as otherwise specifically determined by the board. The fund shall~~
45 ~~reimburse the department of labor for all costs of providing staff required by this~~
46 ~~subsection. Such reimbursement shall be made on an annual basis, pursuant to~~
47 ~~contract negotiated between the fund and the department of labor. The fund is~~
48 ~~a body corporate and politic, and the state of Missouri shall not be liable in any~~
49 ~~way with respect to claims made against the fund or against member employers~~
50 ~~covered by the fund, nor with respect to any expense of operation of the fund.~~

51 Money in the fund is not state money nor is it money collected or received by the
52 state.—

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

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

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

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

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

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

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

87 ~~15. The board shall meet in Jefferson City, Missouri, upon the written~~
88 ~~call of the chairman or by the agreement of any three members of the board.~~
89 ~~Notice of the meeting shall be delivered to all other trustees in person or by~~
90 ~~depositing notice in a United States post office in a properly stamped and~~
91 ~~addressed envelope not less than six days prior to the date fixed for the meeting.~~
92 ~~The board may meet at any time by unanimous mutual consent.—~~

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

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

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

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

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

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

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

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

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

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

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

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

132 ~~28. The board shall set up and maintain a Missouri mesothelioma risk~~
133 ~~management fund account in which shall be placed all contributions, premiums,~~
134 ~~and income from all sources. All property, money, funds, investments, and rights~~
135 ~~which shall belong to, or be available for expenditure or use by, the fund shall be~~

136 ~~dedicated to and held in trust for the purposes set out in this section and no other.~~
137 ~~The board shall have power, in the name of and on behalf of the fund, to~~
138 ~~purchase, acquire, hold, invest, lend, lease, sell, assign, transfer, and dispose of~~
139 ~~all property, rights, and securities, and enter into written contracts, all as may be~~
140 ~~necessary or proper to carry out the purposes of this section.~~

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

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

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

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

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

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

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