

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 66

99TH GENERAL ASSEMBLY

2017

0250H.06T

AN ACT

To repeal sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, and 287.780, RSMo, and to enact in lieu thereof twelve 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, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, and 287.780, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, 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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 which is leased or contracted with a driver to a for-hire motor carrier operating
14 within a commercial zone as defined in section 390.020 or 390.041, or operating
15 under a certificate issued by the Missouri department of transportation or by the
16 United States Department of Transportation, or any of its subagencies. The word
17 "employee" also shall not include any person performing services for board,
18 lodging, aid, or sustenance received from any religious, charitable, or relief
19 organization.

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

25 3. (1) In this chapter the term "injury" is hereby defined to be an injury
26 which has arisen out of and in the course of employment. An injury by accident
27 is compensable only if the accident was the prevailing factor in causing both the
28 resulting medical condition and disability. "The prevailing factor" is defined to
29 be the primary factor, in relation to any other factor, causing both the resulting
30 medical condition and disability.

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

33 (a) It is reasonably apparent, upon consideration of all the circumstances,
34 that the accident is the prevailing factor in causing the injury; and

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

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

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

44 (5) The terms "injury" and "personal injuries" shall mean violence to the
45 physical structure of the body and to the personal property which is used to make
46 up the physical structure of the body, such as artificial dentures, artificial limbs,
47 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
48 to replace the physical structure and such disease or infection as naturally results

49 therefrom. These terms shall in no case except as specifically provided in this
50 chapter be construed to include occupational disease in any form, nor shall they
51 be construed to include any contagious or infectious disease contracted during the
52 course of the employment, nor shall they include death due to natural causes
53 occurring while the worker is at work.

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

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

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

69 7. As used in this chapter and all acts amendatory thereof, the term
70 "commission" shall hereafter be construed as meaning and referring exclusively
71 to the labor and industrial relations commission of Missouri, and the term
72 "director" shall hereafter be construed as meaning the director of the department
73 of insurance, financial institutions and professional registration of the state of
74 Missouri or such agency of government as shall exercise the powers and duties
75 now conferred and imposed upon the department of insurance, financial
76 institutions and professional registration of the state of Missouri.

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

80 9. For the purposes of this chapter, the term "minor" means a person who
81 has not attained the age of eighteen years; except that, for the purpose of
82 computing the compensation provided for in this chapter, the provisions of section
83 287.250 shall control.

84 10. In applying the provisions of this chapter, it is the intent of the

85 legislature to reject and abrogate earlier case law interpretations on the meaning
86 of or definition of "accident", "occupational disease", "arising out of", and "in the
87 course of the employment" to include, but not be limited to, holdings in: Bennett
88 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);
89 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,
90 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
91 following those cases.

92 11. For the purposes of this chapter, "occupational diseases due to toxic
93 exposure" shall only include the following: mesothelioma, asbestosis, berylliosis,
94 coal worker's pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis,
95 manganism, acute myelogenous leukemia, and myelodysplastic syndrome.

96 **12. For the purposes of this chapter, "maximum medical**
97 **improvement" shall mean the point at which the injured employee's**
98 **medical condition has stabilized and can no longer reasonably improve**
99 **with additional medical care, as determined within a reasonable degree**
100 **of medical certainty.**

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

21 which accrue on or after the date the notice of rescission form is received by the
22 insurance company.

23 **2. Notwithstanding any other provision of law to the contrary,**
24 **beginning January 1, 2018, a shareholder of an S corporation, as**
25 **defined in subsection 1 of section 143.471, with at least forty percent or**
26 **greater interest in the S corporation, may individually elect to reject**
27 **coverage under this chapter by providing a written notice of such**
28 **rejection to the S corporation and its insurer. Failure to provide notice**
29 **to the S corporation shall not be grounds for any shareholder to claim**
30 **that the rejection of such coverage is not legally effective. A**
31 **shareholder who elects to reject such coverage shall not thereafter be**
32 **entitled to workers' compensation benefits under the policy, even if**
33 **-serving or working in the capacity of an employee of the S corporation,**
34 **at least until such time as such shareholder provides the S corporation**
35 **and its insurer with a written notice that rescinds the prior rejection**
36 **of such coverage. Any rescission shall be prospective in nature and**
37 **shall entitle the shareholder only to such benefits that accrue on or**
38 **after the date the notice of rescission is received by the insurance**
39 **company.**

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

14 2. The rights and remedies herein granted to an employee shall exclude
15 all other rights and remedies of the employee, [his wife, her husband] **the**
16 **employee's spouse**, parents, personal representatives, dependents, heirs or next
17 kin, at common law or otherwise, on account of such injury or death by accident

18 or occupational disease, except such rights and remedies as are not provided for
19 by this chapter.

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

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

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

37 6. (1) Where the employee fails to obey any rule or policy adopted by the
38 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
39 controlled drugs in the workplace, the compensation and death benefit provided
40 for herein shall be reduced fifty percent if the injury was sustained in conjunction
41 with the use of alcohol or nonprescribed controlled drugs.

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

46 (3) The voluntary use of alcohol to the percentage of blood alcohol
47 sufficient under Missouri law to constitute legal intoxication shall give rise to a
48 rebuttable presumption that the voluntary use of alcohol under such
49 circumstances was the proximate cause of the injury. A preponderance of the
50 evidence standard shall apply to rebut such presumption. An employee's refusal
51 to take a test for alcohol or a nonprescribed controlled substance, as defined by
52 section 195.010, at the request of the employer shall result in the forfeiture of
53 benefits under this chapter if the employer had sufficient cause to suspect use of

54 alcohol or a nonprescribed controlled substance by the claimant or if the
55 employer's policy clearly authorizes post-injury testing.

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

63 **(a) The initial testing was administered within twenty-four hours**
64 **of the accident or injury;**

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

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

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

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

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

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

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

88 8. Mental injury resulting from work-related stress does not arise out of
89 and in the course of the employment, unless it is demonstrated that the stress is

90 work related and was extraordinary and unusual. The amount of work stress
91 shall be measured by objective standards and actual events.

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

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

287.149. 1. Temporary total disability or temporary partial disability
2 benefits shall be paid throughout the rehabilitative process **until the employee**
3 **reaches maximum medical improvement, unless such benefits are**
4 **terminated by the employee's return to work or are terminated as**
5 **otherwise specified in this chapter.**

6 2. The permanency of the employee's disability under sections 287.170 to
7 287.200 shall not be established, determined or adjudicated while the employee
8 is participating in rehabilitation services.

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

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

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

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

15 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six
16 and two-thirds percent of the injured employee's average weekly earnings as of
17 the date of the injury; provided that the weekly compensation paid under this
18 subdivision shall not exceed an amount equal to seventy-five percent of the state
19 average weekly wage, as such wage is determined by the division of employment
20 security, as of the July first immediately preceding the date of injury;

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

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

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

34 2. Temporary total disability payments shall be made to the claimant by
35 check or other negotiable instruments approved by the director which will not
36 result in delay in payment and shall be forwarded directly to the claimant
37 without intervention, or, when requested, to claimant's attorney if represented,
38 except as provided in section 454.517, by any other party except by order of the
39 division of workers' compensation.

40 3. An employee is disqualified from receiving temporary total disability
41 during any period of time in which the claimant applies and receives
42 unemployment compensation.

43 4. If the employee is terminated from post-injury employment based upon
44 the employee's post-injury misconduct, neither temporary total disability nor
45 temporary partial disability benefits under this section or section 287.180 are
46 payable. As used in this section, the phrase "post-injury misconduct" shall not
47 include absence from the workplace due to an injury unless the employee is
48 capable of working with restrictions, as certified by a physician.

49 **5. If an employee voluntarily separates from employment with an**
50 **employer at a time when the employer had work available for the**

51 **employee that was in compliance with any medical restriction imposed**
52 **upon the employee within a reasonable degree of medical certainty as**
53 **a result of the injury that is the subject of a claim for benefits under**
54 **this chapter, neither temporary total disability nor temporary partial**
55 **disability benefits available under this section or section 287.180 shall**
56 **be payable.**

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

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

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

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

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

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

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

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

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

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

66 (2) For occupational diseases due to toxic exposure, but not including

67 mesothelioma, an amount equal to two hundred percent of the state's average
68 weekly wage as of the date of diagnosis for one hundred weeks paid by the
69 employer; and

70 (3) In cases where occupational diseases due to toxic exposure are
71 diagnosed to be mesothelioma:

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

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

89 (4) The provisions of subdivision (2) and paragraph (a) of subdivision (3)
90 of this subsection shall not be subject to suspension of benefits as provided in
91 subsection 3 of this section; and

92 (5) Notwithstanding any other provision of this chapter to the contrary,
93 should the employee die before the additional benefits provided for in subdivision
94 (2) and paragraph (a) of subdivision (3) of this subsection are paid, the additional
95 benefits are payable to the employee's spouse or children, natural or adopted,
96 legitimate or illegitimate, in addition to benefits provided under section 287.240.
97 If there is no surviving spouse or children and the employee has received less
98 than the additional benefits provided for in subdivision (2) and paragraph (a) of
99 subdivision (3) of this subsection the remainder of such additional benefits shall
100 be paid as a single payment to the estate of the employee;

101 (6) The provisions of subdivision (1) of this subsection shall not be
102 construed to affect the employee's ability to obtain medical treatment at the

103 employer's expense or any other benefits otherwise available under this chapter.

104 5. Any employee who obtains benefits under subdivision (2) of subsection
105 4 of this section for acquiring asbestosis who later obtains an award for
106 mesothelioma shall not receive more benefits than such employee would receive
107 having only obtained benefits for mesothelioma under this section.

287.203. Whenever the employer has provided compensation under section
2 287.170, 287.180 or 287.200, and terminates such compensation, the employer
3 shall notify the employee of such termination and shall advise the employee of
4 the reason for such termination. If the employee disputes the termination of such
5 benefits, the employee may request a hearing before the division and the division
6 shall set the matter for hearing within [~~sixty~~] **thirty** days of such request and
7 the division shall hear the matter on the date of hearing and no continuances or
8 delays may be granted except upon a showing of good cause or by consent of the
9 parties. The division shall render a decision within thirty days of the date of
10 hearing. If the division or the commission determines that any proceedings have
11 been brought, prosecuted, or defended without reasonable grounds, the division
12 may assess the whole cost of the proceedings upon the party who brought,
13 prosecuted, or defended them.

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

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

19 the burial expense, it shall be paid within thirty days after written notice, that
20 the service has been rendered, has been delivered to the employer. The notice
21 may be sent by registered mail, return receipt requested, or may be made by
22 personal delivery;

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

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

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

49 (c) If the injury which caused the death occurred on or after August 28,
50 1990, but before August 28, 1991, the weekly compensation shall be an amount
51 equal to sixty-six and two-thirds percent of the injured employee's average weekly
52 earnings as of the date of the injury; provided that the weekly compensation paid
53 under this paragraph shall not exceed an amount equal to one hundred percent
54 of the state average weekly wage;

55 (d) If the injury which caused the death occurred on or after August 28,
56 1991, the weekly compensation shall be an amount equal to sixty-six and two-
57 thirds percent of the injured employee's average weekly earnings as of the date
58 of the injury; provided that the weekly compensation paid under this paragraph
59 shall not exceed an amount equal to one hundred five percent of the state average
60 weekly wage;

61 (e) If the injury which caused the death occurred on or after September
62 28, 1981, the weekly compensation shall in no event be less than forty dollars per
63 week;

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

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

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

87 (b) A natural, posthumous, or adopted child or children, whether
88 legitimate or illegitimate, **including any stepchild claimable by the**
89 **deceased on his or her federal tax return at the time of injury**, under the
90 age of eighteen years, or over that age if physically or mentally incapacitated

91 from wage earning, upon the parent legally liable for the support or with whom
92 he, she, or they are living at the time of the death of the parent. In case there
93 is a wife or a husband mentally or physically incapacitated from wage earning,
94 dependent upon a wife or husband, and a child or more than one child thus
95 dependent, the death benefit shall be divided among them in such proportion as
96 may be determined by the commission after considering their ages and other facts
97 bearing on the dependency. In all other cases questions of **[total or partial] the**
98 **degree of** dependency shall be determined in accordance with the facts at the
99 time of the injury, and in such other cases if there is more than one person wholly
100 dependent the death benefit shall be divided equally among them. The payment
101 of death benefits to a child or other dependent as provided in this paragraph shall
102 cease when the dependent dies, attains the age of eighteen years, or becomes
103 physically and mentally capable of wage earning over that age, or until twenty-
104 two years of age if the child of the deceased is in attendance and remains as a
105 full-time student in any accredited educational institution, or if at eighteen years
106 of age the dependent child is a member of the Armed Forces of the United States
107 on active duty; provided, however, that such dependent child shall be entitled to
108 compensation during four years of full-time attendance at a fully accredited
109 educational institution to commence prior to twenty-three years of age and
110 immediately upon cessation of his **or her** active duty in the Armed Forces, unless
111 there are other **[total]** dependents entitled to the death benefit under this
112 chapter;

113 **[(5)] (4)** The division or the commission may, in its discretion, order or
114 award the share of compensation of any such child to be paid to the parent,
115 grandparent, or other adult next of kin or conservator of the child for the latter's
116 support, maintenance and education, which order or award upon notice to the
117 parties may be modified from time to time by the commission in its discretion
118 with respect to the person to whom shall be paid the amount of the order or
119 award remaining unpaid at the time of the modification;

120 **[(6)] (5)** The payments of compensation by the employer in accordance
121 with the order or award of the division or the commission shall discharge the
122 employer from all further obligations as to the compensation;

123 **[(7)] (6)** All death benefits in this chapter shall be paid in installments
124 in the same manner as provided for disability compensation;

125 **[(8)] (7)** Every employer shall keep a record of the correct names and
126 addresses of the dependents of each of his **or her** employees, and upon the death

127 of an employee by accident arising out of and in the course of his **or her**
128 employment shall so far as possible immediately furnish the division with such
129 names and addresses;

130 ~~[(9)]~~ **(8)** Dependents receiving death benefits under the provisions of this
131 chapter shall annually report to the division as to marital status in the case of
132 a widow or widower or age and physical or mental condition of a dependent
133 child. The division shall provide forms for the making of such reports.

287.243. 1. This section shall be known and may be cited as the "Line of
2 Duty Compensation Act".

3 2. As used in this section, unless otherwise provided, the following words
4 shall mean:

5 (1) "Air ambulance pilot", a person certified as an air ambulance pilot in
6 accordance with sections 190.001 to 190.245 and corresponding regulations
7 applicable to air ambulances adopted by the department of health and senior
8 services, division of regulation and licensure, 19 CSR 30-40.005, et seq.;

9 (2) "Air ambulance registered professional nurse", a person licensed as a
10 registered professional nurse in accordance with sections 335.011 to 335.096 and
11 corresponding regulations adopted by the state board of nursing, 20 CSR 2200-4,
12 et seq., who provides registered professional nursing services as a flight nurse in
13 conjunction with an air ambulance program that is certified in accordance with
14 sections 190.001 to 190.245 and the corresponding regulations applicable to such
15 programs;

16 (3) **"Child", any natural, illegitimate, adopted, or posthumous**
17 **child or stepchild of a deceased law enforcement officer, emergency**
18 **medical technician, air ambulance pilot, air ambulance registered**
19 **professional nurse, or firefighter who, at the time of the law**
20 **enforcement officer's, emergency medical technician's, air ambulance**
21 **pilot's, air ambulance registered professional nurse's, or firefighter's**
22 **fatality is:**

23 (a) **Eighteen years of age or under;**

24 (b) **Over eighteen years of age and a student, as defined in 5**
25 **U.S.C. Section 8101; or**

26 (c) **Over eighteen years of age and incapable of self-support**
27 **because of physical or mental disability;**

28 (4) "Emergency medical technician", a person licensed in emergency
29 medical care in accordance with standards prescribed by sections 190.001 to

30 190.245 and by rules adopted by the department of health and senior services
31 under sections 190.001 to 190.245;

32 [(4)] (5) "Firefighter", any person, including a volunteer firefighter,
33 employed by the state or a local governmental entity as an employer defined
34 under subsection 1 of section 287.030, or otherwise serving as a member or officer
35 of a fire department either for the purpose of the prevention or control of fire or
36 the underwater recovery of drowning victims;

37 [(5)] (6) "Killed in the line of duty", when any person defined in this
38 section loses his or her life when:

39 (a) Death is caused by an accident or the willful act of violence of another;

40 (b) The law enforcement officer, emergency medical technician, air
41 ambulance pilot, air ambulance registered professional nurse, or firefighter is in
42 the active performance of his or her duties in his or her respective profession and
43 there is a relationship between the accident or commission of the act of violence
44 and the performance of the duty, even if the individual is off duty; the law
45 enforcement officer, emergency medical technician, air ambulance pilot, air
46 ambulance registered professional nurse, or firefighter is traveling to or from
47 employment; or the law enforcement officer, emergency medical technician, air
48 ambulance pilot, air ambulance registered professional nurse, or firefighter is
49 taking any meal break or other break which takes place while that individual is
50 on duty;

51 (c) Death is the natural and probable consequence of the injury; and

52 (d) Death occurs within three hundred weeks from the date the injury was
53 received.

54 The term excludes death resulting from the willful misconduct or intoxication of
55 the law enforcement officer, emergency medical technician, air ambulance pilot,
56 air ambulance registered professional nurse, or firefighter. The division of
57 workers' compensation shall have the burden of proving such willful misconduct
58 or intoxication;

59 [(6)] (7) "Law enforcement officer", any person employed by the state or
60 a local governmental entity as a police officer, peace officer certified under
61 chapter 590, or serving as an auxiliary police officer or in some like position
62 involving the enforcement of the law and protection of the public interest at the
63 risk of that person's life;

64 [(7)] (8) "Local governmental entity", includes counties, municipalities,
65 townships, board or other political subdivision, cities under special charter, or

66 under the commission form of government, fire protection districts, ambulance
67 districts, and municipal corporations;

68 [(8)] (9) "State", the state of Missouri and its departments, divisions,
69 boards, bureaus, commissions, authorities, and colleges and universities;

70 [(9)] (10) "Volunteer firefighter", a person having principal employment
71 other than as a firefighter, but who is carried on the rolls of a regularly
72 constituted fire department either for the purpose of the prevention or control of
73 fire or the underwater recovery of drowning victims, the members of which are
74 under the jurisdiction of the corporate authorities of a city, village, incorporated
75 town, or fire protection district. Volunteer firefighter shall not mean an
76 individual who volunteers assistance without being regularly enrolled as a
77 firefighter.

78 3. (1) A claim for compensation under this section shall be filed by [the
79 estate of] **survivors of** the deceased with the division of workers' compensation
80 not later than one year from the date of death of a law enforcement officer,
81 emergency medical technician, air ambulance pilot, air ambulance registered
82 professional nurse, or firefighter. If a claim is made within one year of the date
83 of death of a law enforcement officer, emergency medical technician, air
84 ambulance pilot, air ambulance registered professional nurse, or firefighter killed
85 in the line of duty, compensation shall be paid, if the division finds that the
86 claimant is entitled to compensation under this section.

87 (2) The amount of compensation paid to the claimant shall be twenty-five
88 thousand dollars, subject to appropriation, for death occurring on or after June
89 19, 2009.

90 4. **Any compensation awarded under the provisions of this**
91 **section shall be distributed as follows:**

92 (1) **To the surviving spouse of the law enforcement officer,**
93 **emergency medical technician, air ambulance pilot, air ambulance**
94 **registered professional nurse, or firefighter if there is no child who**
95 **survived the law enforcement officer, emergency medical technician,**
96 **air ambulance pilot, air ambulance registered professional nurse, or**
97 **firefighter;**

98 (2) **Fifty percent to the surviving child, or children, in equal**
99 **shares, and fifty percent to the surviving spouse if there is at least one**
100 **child who survived the law enforcement officer, emergency medical**
101 **technician, air ambulance pilot, air ambulance registered professional**

102 nurse, or firefighter, and a surviving spouse of the law enforcement
103 officer, emergency medical technician, air ambulance pilot, air
104 ambulance registered professional nurse, or firefighter;

105 (3) To the surviving child, or children, in equal shares, if there
106 is no surviving spouse of the law enforcement officer, emergency
107 medical technician, air ambulance pilot, air ambulance registered
108 professional nurse, or firefighter;

109 (4) If there is no surviving spouse of the law enforcement officer,
110 emergency medical technician, air ambulance pilot, air ambulance
111 registered professional nurse, or firefighter and no surviving child:

112 (a) To the surviving individual, or individuals, in shares per the
113 designation or, otherwise, in equal shares, designated by the law
114 enforcement officer, emergency medical technician, air ambulance
115 pilot, air ambulance registered professional nurse, or firefighter to
116 receive benefits under this subsection in the most recently executed
117 designation of beneficiary of the law enforcement officer, emergency
118 medical technician, air ambulance pilot, air ambulance registered
119 professional nurse, or firefighter on file at the time of death with the
120 public safety agency, organization, or unit; or

121 (b) To the surviving individual, or individuals, in equal shares,
122 designated by the law enforcement officer, emergency medical
123 technician, air ambulance pilot, air ambulance registered professional
124 nurse, or firefighter to receive benefits under the most recently
125 executed life insurance policy of the law enforcement officer,
126 emergency medical technician, air ambulance pilot, air ambulance
127 registered professional nurse, or firefighter on file at the time of death
128 with the public safety agency, organization, or unit if there is no
129 individual qualifying under paragraph (a);

130 (5) To the surviving parent, or parents, in equal shares, of the
131 law enforcement officer, emergency medical technician, air ambulance
132 pilot, air ambulance registered professional nurse, or firefighter if
133 there is no individual qualifying under subdivisions (1), (2), (3), or (4)
134 of this subsection; or

135 (6) To the surviving individual, or individuals, in equal shares,
136 who would qualify under the definition of the term "child" but for age
137 if there is no individual qualifying under subdivision (1), (2), (3), (4), or
138 (5) of this subsection.

139 **5.** Notwithstanding subsection 3 of this section, no compensation is
140 payable under this section unless a claim is filed within the time specified under
141 this section setting forth:

142 (1) The name, address, and title or designation of the position in which
143 the law enforcement officer, emergency medical technician, air ambulance pilot,
144 air ambulance registered professional nurse, or firefighter was serving at the time
145 of his or her death;

146 (2) The name and address of the claimant;

147 (3) A full, factual account of the circumstances resulting in or the course
148 of events causing the death at issue; and

149 (4) Such other information that is reasonably required by the division.

150 When a claim is filed, the division of workers' compensation shall make an
151 investigation for substantiation of matters set forth in the application.

152 **[5.] 6.** The compensation provided for under this section is in addition to,
153 and not exclusive of, any pension rights, death benefits, or other compensation
154 the claimant may otherwise be entitled to by law.

155 **[6.] 7.** Neither employers nor workers' compensation insurers shall have
156 subrogation rights against any compensation awarded for claims under this
157 section. Such compensation shall not be assignable, shall be exempt from
158 attachment, garnishment, and execution, and shall not be subject to setoff or
159 counterclaim, or be in any way liable for any debt, except that the division or
160 commission may allow as lien on the compensation, reasonable attorney's fees for
161 services in connection with the proceedings for compensation if the services are
162 found to be necessary. Such fees are subject to regulation as set forth in section
163 287.260.

164 **[7.] 8.** Any person seeking compensation under this section who is
165 aggrieved by the decision of the division of workers' compensation regarding his
166 or her compensation claim, may make application for a hearing as provided in
167 section 287.450. The procedures applicable to the processing of such hearings
168 and determinations shall be those established by this chapter. Decisions of the
169 administrative law judge under this section shall be binding, subject to review by
170 either party under the provisions of section 287.480.

171 **[8.] 9.** Pursuant to section 23.253 of the Missouri sunset act:

172 (1) The provisions of the new program authorized under this section shall
173 automatically sunset six years after June 19, 2019, unless reauthorized by an act
174 of the general assembly; and

175 (2) If such program is reauthorized, the program authorized under this
176 section shall automatically sunset twelve years after the effective date of the
177 reauthorization of this section; and

178 (3) This section shall terminate on September first of the calendar year
179 immediately following the calendar year in which the program authorized under
180 this section is sunset.

181 [9.] 10. The provisions of this section, unless specified, shall not be
182 subject to other provisions of this chapter.

183 [10.] 11. There is hereby created in the state treasury the "Line of Duty
184 Compensation Fund", which shall consist of moneys appropriated to the fund and
185 any voluntary contributions, gifts, or bequests to the fund. The state treasurer
186 shall be custodian of the fund and shall approve disbursements from the fund in
187 accordance with sections 30.170 and 30.180. Upon appropriation, money in the
188 fund shall be used solely for paying claims under this section. Notwithstanding
189 the provisions of section 33.080 to the contrary, any moneys remaining in the
190 fund at the end of the biennium shall not revert to the credit of the general
191 revenue fund. The state treasurer shall invest moneys in the fund in the same
192 manner as other funds are invested. Any interest and moneys earned on such
193 investments shall be credited to the fund.

194 [11.] 12. The division shall promulgate rules to administer this section,
195 including but not limited to the appointment of claims to multiple claimants,
196 record retention, and procedures for information requests. Any rule or portion
197 of a rule, as that term is defined in section 536.010, that is created under the
198 authority delegated in this section shall become effective only if it complies with
199 and is subject to all of the provisions of chapter 536 and, if applicable, section
200 536.028. This section and chapter 536 are nonseverable and if any of the powers
201 vested with the general assembly under chapter 536 to review, to delay the
202 effective date, or to disapprove and annul a rule are subsequently held
203 unconstitutional, then the grant of rulemaking authority and any rule proposed
204 or adopted after June 19, 2009, shall be invalid and void.

287.280. 1. Every employer subject to the provisions of this chapter shall,
2 on either an individual or group basis, insure their entire liability under the
3 workers' compensation law; and may insure in whole or in part their employer
4 liability, under a policy of insurance or a self-insurance plan, except as hereafter
5 provided, with some insurance carrier authorized to insure such liability in this
6 state, except that an employer or group of employers may themselves carry the

7 whole or any part of the liability without insurance upon satisfying the division
8 of their ability to do so. If an employer or group of employers have qualified to
9 self-insure their liability under this chapter, the division of workers'
10 compensation may, if it finds after a hearing that the employer or group of
11 employers are willfully and intentionally violating the provisions of this chapter
12 with intent to defraud their employees of their right to compensation, suspend or
13 revoke the right of the employer or group of employers to self-insure their
14 liability. If the employer or group of employers fail to comply with this section,
15 an injured employee or his **or her** dependents may elect after the injury either
16 to bring an action against such employer or group of employers to recover
17 damages for personal injury or death and it shall not be a defense that the injury
18 or death was caused by the negligence of a fellow servant, or that the employee
19 had assumed the risk of the injury or death, or that the injury or death was
20 caused to any degree by the negligence of the employee; or to recover under this
21 chapter with the compensation payments commuted and immediately payable; or,
22 if the employee elects to do so, he or she may file a request with the division for
23 payment to be made for medical expenses out of the second injury fund as
24 provided in subsection 7 of section 287.220. If the employer or group of employers
25 are carrying their own insurance, on the application of any person entitled to
26 compensation and on proof of default in the payment of any installment, the
27 division shall require the employer or group of employers to furnish security for
28 the payment of the compensation, and if not given, all other compensation shall
29 be commuted and become immediately payable; provided, that employers engaged
30 in the mining business shall be required to insure only their liability hereunder
31 to the extent of the equivalent of the maximum liability under this chapter for ten
32 deaths in any one accident, but the employer or group of employers may carry
33 their own risk for any excess liability. When a group of employers enter into an
34 agreement to pool their liabilities under this chapter, individual members will not
35 be required to qualify as individual self-insurers.

36 2. Groups of employers qualified to insure their liability pursuant to
37 chapter 537 or this chapter shall utilize a uniform experience rating plan
38 promulgated by an approved advisory organization. Such groups shall develop
39 experience ratings for their members based on the plan. Nothing in this section
40 shall relieve an employer from remitting, without any charge to the employer, the
41 employer's claims history to an approved advisory organization.

42 3. For every entity qualified to group self-insure their liability pursuant

43 to this chapter or chapter 537, each entity shall not authorize total discounts for
44 any individual member exceeding twenty-five percent beginning January 1, 1999.
45 All discounts shall be based on objective quantitative factors and applied
46 uniformly to all trust members.

47 4. Any group of employers that have qualified to self-insure their liability
48 pursuant to this chapter shall file with the division premium rates, based on pure
49 premium rate data, adjusted for loss development and loss trending as filed by
50 the advisory organization with the department of insurance, financial institutions
51 and professional registration pursuant to section 287.975, plus any estimated
52 expenses and other factors or based on average rate classifications calculated by
53 the department of insurance, financial institutions and professional registration
54 as taken from the premium rates filed by the twenty insurance companies
55 providing the greatest volume of workers' compensation insurance coverage in
56 this state. The rate is inadequate if funds equal to the full ultimate cost of
57 anticipated losses and loss adjustment expenses are not produced when the
58 prospective loss costs are applied to anticipated payrolls. The provisions of this
59 subsection shall not apply to those political subdivisions of this state that have
60 qualified to self-insure their liability pursuant to this chapter as authorized by
61 section 537.620 on an assessment plan. Any such group may file with the
62 division a composite rate for all coverages provided under that section.

63 5. **When considering applications for new trust self-insurers, as**
64 **described under 8 CSR 50-3.010, the division shall require proof of**
65 **payment by each member of not less than twenty-five percent of the**
66 **estimated annual premium; except that, for new members who wish to**
67 **join an existing trust self-insurer during the policy year rather than at**
68 **the beginning of the policy year, the division shall require proof of**
69 **payment of the lesser of the estimated premium of three months or the**
70 **estimated premium for the balance of the policy year.**

71 6. **Self-insured trusts, as described under 8 CSR 50-3.010, may**
72 **invest surplus moneys from a prior trust year not needed for current**
73 **obligations. Notwithstanding any provision of law to the contrary,**
74 **upon approval by the division, a self-insured trust may invest up to one**
75 **hundred percent of surplus moneys in securities designated by the**
76 **state treasurer as acceptable collateral to secure state deposits under**
77 **section 30.270.**

78 7. Any finding or determination made by the division under this section

79 may be reviewed as provided in sections 287.470 and 287.480.

80 [6.] 8. No rule or portion of a rule promulgated under the authority of
81 this section shall become effective unless it has been promulgated pursuant to the
82 provisions of section 536.024.

83 [7.] 9. Any records submitted pursuant to this section, and pursuant to
84 any rule promulgated by the division pursuant to this section, shall be considered
85 confidential and not subject to chapter 610. Any party to a workers'
86 compensation case involving the party that submitted the records shall be able
87 to subpoena the records for use in a workers' compensation case, if the
88 information is otherwise relevant.

287.390. 1. Parties to claims hereunder may enter into voluntary
2 agreements in settlement thereof, but no agreement by an employee or his or her
3 dependents to waive his or her rights under this chapter shall be valid, nor shall
4 any agreement of settlement or compromise of any dispute or claim for
5 compensation under this chapter be valid until approved by an administrative
6 law judge or the commission, nor shall an administrative law judge or the
7 commission approve any settlement which is not in accordance with the rights of
8 the parties as given in this chapter. No such agreement shall be valid unless
9 made after seven days from the date of the injury or death. An administrative
10 law judge, or the commission, shall approve a settlement agreement as valid and
11 enforceable as long as the settlement is not the result of undue influence or fraud,
12 the employee fully understands his or her rights and benefits, and voluntarily
13 agrees to accept the terms of the agreement.

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

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

23 4. A minor dependent, by parent or conservator, may compromise disputes
24 and may enter into a compromise settlement agreement, and upon approval by
25 an administrative law judge or the commission the settlement agreement shall
26 have the same force and effect as though the minor had been an adult. The

27 payment of compensation by the employer in accordance with the settlement
28 agreement shall discharge the employer from all further obligation.

29 5. In any claim under this chapter where an offer of settlement is made
30 in writing and filed with the division by the employer, an employee is entitled to
31 one hundred percent of the amount offered, provided such employee is not
32 represented by counsel at the time the offer is tendered. Where such offer of
33 settlement is not accepted and where additional proceedings occur with regard to
34 the employee's claim, the employee is entitled to one hundred percent of the
35 amount initially offered. Legal counsel representing the employee shall receive
36 reasonable fees for services rendered.

37 6. As used in this chapter, "amount in dispute" means the dollar amount
38 in excess of the dollar amount offered or paid by the employer. An offer of
39 settlement shall not be construed as an admission of liability.

40 **7. (1) In the case of compromise settlements offered after a**
41 **claimant has reached maximum medical improvement, upon receipt of**
42 **a permanent disability rating from the employer's physician, a claimant**
43 **shall have a period of twelve months from such date to acquire a rating**
44 **from a second physician of his or her own choosing.**

45 **(2) Absent a finding of extenuating circumstances by an**
46 **administrative law judge or the commission, if after twelve months a**
47 **claimant has not acquired a rating from a second physician, any**
48 **compromise settlement entered into under this section shall be based**
49 **upon the initial rating.**

50 **(3) A finding of extenuating circumstances by an administrative**
51 **law judge or the commission shall require more than failure of the**
52 **claimant to timely obtain a rating from a second physician.**

53 **(4) The provisions of this subsection may be waived by the**
54 **employer with or without stating a cause.**

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

9 **discrimination and had a determinative influence on the discharge or**
10 **discrimination.**

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Unofficial

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