

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE NO.2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1**  
97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR RUPP.

Offered February 12, 2013.

Senate Substitute No.2 adopted, February 12, 2013.

Taken up for Perfection February 12, 2013. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0225S.06P

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**AN ACT**

To repeal sections 287.020, 287.067, 287.120, 287.140, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, and 287.745, RSMo, and to enact in lieu thereof eleven new sections relating to workers' compensation, with an existing penalty provision and an emergency clause for certain sections.

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

Section A. Sections 287.020, 287.067, 287.120, 287.140, 287.200, 287.210,  
2 287.220, 287.610, 287.690, 287.715, and 287.745, RSMo, are repealed and eleven  
3 new sections enacted in lieu thereof, to be known as sections 287.020, 287.067,  
4 287.120, 287.140, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, and  
5 287.745, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be  
2 construed to mean every person in the service of any employer, as defined in this  
3 chapter, under any contract of hire, express or implied, oral or written, or under  
4 any appointment or election, including executive officers of corporations. Except  
5 as otherwise provided in section 287.200, any reference to any employee who has  
6 been injured shall, when the employee is dead, also include his dependents, and  
7 other persons to whom compensation may be payable. The word "employee" shall  
8 also include all minors who work for an employer, whether or not such minors are  
9 employed in violation of law, and all such minors are hereby made of full age for

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

10 all purposes under, in connection with, or arising out of this chapter. The word  
11 "employee" shall not include an individual who is the owner, as defined in  
12 subsection 43 of section 301.010, and operator of a motor vehicle which is leased  
13 or contracted with a driver to a for-hire motor carrier operating within a  
14 commercial zone as defined in section 390.020 or 390.041, or operating under a  
15 certificate issued by the Missouri department of transportation or by the United  
16 States Department of Transportation, or any of its subagencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 3. An injury due to repetitive motion is recognized as an occupational  
18 disease for purposes of this chapter. An occupational disease due to repetitive  
19 motion is compensable only if the occupational exposure was the prevailing factor  
20 in causing both the resulting medical condition and disability. The "prevailing  
21 factor" is defined to be the primary factor, in relation to any other factor, causing  
22 both the resulting medical condition and disability. Ordinary, gradual  
23 deterioration, or progressive degeneration of the body caused by aging or by the  
24 normal activities of day-to-day living shall not be compensable.

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

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

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

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

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

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, parents,  
16 personal representatives, dependents, heirs or next kin, at common law or  
17 otherwise, on account of such injury or death **by accident or occupational**  
18 **disease**, except such rights and remedies as are not provided for by this chapter.

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

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

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

36 6. (1) Where the employee fails to obey any rule or policy adopted by the  
37 employer relating to a drug-free workplace or the use of alcohol or nonprescribed  
38 controlled drugs in the workplace, the compensation and death benefit provided  
39 for herein shall be reduced fifty percent if the injury was sustained in conjunction  
40 with the use of alcohol or nonprescribed controlled drugs.

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

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

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

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

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

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

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

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

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

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

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



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

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

56           **(1) Two years from the date the medical services were rendered**  
57 **if such services were rendered before July 1, 2013; and**

58           **(2) One year from the date the medical services were rendered**  
59 **if such services were rendered on or after July 1, 2013.**

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

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

70           7. Every hospital or other person furnishing the employee with medical  
71 aid shall permit its record to be copied by and shall furnish full information to  
72 the division or the commission, the employer, the employee or his dependents and

73 any other party to any proceedings for compensation under this chapter, and  
74 certified copies of the records shall be admissible in evidence in any such  
75 proceedings.

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

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

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

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

104 (1) The patient;

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

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

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

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

110 13. (1) No hospital, physician or other health care provider, other than  
111 a hospital, physician or health care provider selected by the employee at his own  
112 expense pursuant to subsection 1 of this section, shall bill or attempt to collect  
113 any fee or any portion of a fee for services rendered to an employee due to a  
114 work-related injury or report to any credit reporting agency any failure of the  
115 employee to make such payment, when an injury covered by this chapter has  
116 occurred and such hospital, physician or health care provider has received actual  
117 notice given in writing by the employee, the employer or the employer's  
118 insurer. Actual notice shall be deemed received by the hospital, physician or  
119 health care provider five days after mailing by certified mail by the employer or  
120 insurer to the hospital, physician or health care provider.

121 (2) The notice shall include:

122 (a) The name of the employer;

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

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

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

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

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

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

143 (5) If an employer or insurer fails to make payment for authorized  
144 services provided to the employee by a hospital, physician or other health care

145 provider pursuant to this chapter, the hospital, physician or other health care  
146 provider may proceed pursuant to subsection 4 of this section with a dispute  
147 against the employer or insurer for any fees or other charges for services  
148 provided.

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

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

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

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

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

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

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

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

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

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

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

55 the commission relative to the resumption of the employee's weekly life payment  
56 in the case.

57 **4. For all claims filed on or after the effective date of this section**  
58 **for occupational diseases due to toxic exposure which result in a**  
59 **permanent total disability or death, benefits in this chapter shall be**  
60 **provided as follows:**

61 **(1) Such amount as due to the employee during said employee's**  
62 **life as provided for under this chapter for an award of permanent total**  
63 **disability and death; and**

64 **(2) An amount equal to two hundred percent of the state's**  
65 **average weekly wage as of the date of diagnosis for one hundred weeks**  
66 **as set forth in section 287.220 (15); and**

67 **(3) In cases where occupational diseases due to toxic exposure**  
68 **are found to be mesothelioma, an additional amount of three hundred**  
69 **percent of the state's average weekly wage for one hundred ninety-one**  
70 **weeks shall be paid as set forth in subsection 15 of section 287.220; and**

71 **(4) The provisions of subdivisions 2 and 3 of this subsection shall**  
72 **not be subject to suspension of benefits as provided in subsection 3 of**  
73 **this section; and**

74 **(5) Notwithstanding any other provision of this chapter to the**  
75 **contrary, should the employee die before the additional benefits**  
76 **provided for in subdivisions 2 and 3 of this subsection are paid, the**  
77 **additional benefits are payable to the employee's spouse or children,**  
78 **natural or adopted, legitimate or illegitimate, in addition to benefits**  
79 **provided under section 287.240. If there is no surviving spouse or**  
80 **children and the employee has received less than the additional**  
81 **benefits provided for in subdivisions 2 and 3 of this subsection the**  
82 **remainder of such additional benefits shall be paid as a single payment**  
83 **to the estate of the employee.**

287.210. 1. After an employee has received an injury he shall from time  
2 to time thereafter during disability submit to reasonable medical examination at  
3 the request of the employer, [his] **the employer's** insurer, the commission, the  
4 division [or], an administrative law judge, **or the attorney general on behalf**  
5 **of the second injury fund if the employer has not obtained a medical**  
6 **examination report**, the time and place of which shall be fixed with due regard  
7 to the convenience of the employee and his physical condition and ability to  
8 attend. The employee may have his own physician present, and if the employee

9 refuses to submit to the examination, or in any way obstructs it, his right to  
10 compensation shall be forfeited during such period unless in the opinion of the  
11 commission the circumstances justify the refusal or obstruction.

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

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

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

43         5. As used in this chapter the terms "physician's report" and "medical  
44 report" mean the report of any physician made on any printed form authorized

45 by the division or the commission or any complete medical report. As used in this  
46 chapter the term "complete medical report" means the report of a physician giving  
47 the physician's qualifications and the patient's history, complaints, details of the  
48 findings of any and all laboratory, X-ray and all other technical examinations,  
49 diagnosis, prognosis, nature of disability, if any, and an estimate of the  
50 percentage of permanent partial disability, if any. An element or elements of a  
51 complete medical report may be met by the physician's records.

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

58           7. The testimony of a treating or examining physician may be submitted  
59 in evidence on the issues in controversy by a complete medical report and shall  
60 be admissible without other foundational evidence subject to compliance with the  
61 following procedures. The party intending to submit a complete medical report  
62 in evidence shall give notice at least sixty days prior to the hearing to all parties  
63 and shall provide reasonable opportunity to all parties to obtain  
64 cross-examination testimony of the physician by deposition. The notice shall  
65 include a copy of the report and all the clinical and treatment records of the  
66 physician including copies of all records and reports received by the physician  
67 from other health care providers. The party offering the report must make the  
68 physician available for cross-examination testimony by deposition not later than  
69 seven days before the matter is set for hearing, and each cross-examiner shall  
70 compensate the physician for the portion of testimony obtained in an amount not  
71 to exceed a rate of reasonable compensation taking into consideration the  
72 specialty practiced by the physician. Cross-examination testimony shall not bind  
73 the cross-examining party. Any testimony obtained by the offering party shall be  
74 at that party's expense on a proportional basis, including the deposition fee of the  
75 physician. Upon request of any party, the party offering a complete medical  
76 report in evidence must also make available copies of X rays or other diagnostic  
77 studies obtained by or relied upon by the physician. Within ten days after receipt  
78 of such notice a party shall dispute whether a report meets the requirements of  
79 a complete medical report by providing written objections to the offering party  
80 stating the grounds for the dispute, and at the request of any party, the



81 administrative law judge shall rule upon such objections upon pretrial hearing  
82 whether the report meets the requirements of a complete medical report and upon  
83 the admissibility of the report or portions thereof. If no objections are filed the  
84 report is admissible, and any objections thereto are deemed waived. Nothing  
85 herein shall prevent the parties from agreeing to admit medical reports or records  
86 by consent. [The provisions of this subsection shall not apply to claims against  
87 the second injury fund.]

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

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

287.220. 1. **There is hereby created in the state treasury a special  
2 fund to be known as the "Second Injury Fund" created exclusively for  
3 the purposes as in this section provided and for special weekly benefits  
4 in rehabilitation cases as provided in section 287.141. A subaccount is  
5 established within the second injury fund that shall contain all revenue  
6 collected under subsection 7 of section 287.715 that shall be used solely  
7 for payment of awards issued pursuant to subdivisions (2) and (3) of  
8 subsection 4 of section 287.200. Maintenance of the second injury fund  
9 shall be as provided by section 287.710. The state treasurer shall be the  
10 custodian of the second injury fund which shall be deposited the same  
11 as are state funds and any interest accruing thereon shall be added  
12 thereto. The fund shall be subject to audit the same as state funds and  
13 accounts and shall be protected by the general bond given by the state  
14 treasurer. Upon the requisition of the director of the division of  
15 workers' compensation, warrants on the state treasurer for the  
16 payment of all amounts payable for compensation and benefits out of  
17 the second injury fund shall be issued.**

18 2. **All claims against the second injury fund for injuries  
19 occurring prior to the effective date of this section shall be  
20 compensated as provided in this subsection. All cases of permanent**

21 disability where there has been previous disability shall be compensated as  
22 herein provided. Compensation shall be computed on the basis of the average  
23 earnings at the time of the last injury. If any employee who has a preexisting  
24 permanent partial disability whether from compensable injury or otherwise, of  
25 such seriousness as to constitute a hindrance or obstacle to employment or to  
26 obtaining reemployment if the employee becomes unemployed, and the preexisting  
27 permanent partial disability, if a body as a whole injury, equals a minimum of  
28 fifty weeks of compensation or, if a major extremity injury only, equals a  
29 minimum of fifteen percent permanent partial disability, according to the medical  
30 standards that are used in determining such compensation, receives a subsequent  
31 compensable injury resulting in additional permanent partial disability so that  
32 the degree or percentage of disability, in an amount equal to a minimum of fifty  
33 weeks compensation, if a body as a whole injury or, if a major extremity injury  
34 only, equals a minimum of fifteen percent permanent partial disability, caused  
35 by the combined disabilities is substantially greater than that which would have  
36 resulted from the last injury, considered alone and of itself, and if the employee  
37 is entitled to receive compensation on the basis of the combined disabilities, the  
38 employer at the time of the last injury shall be liable only for the degree or  
39 percentage of disability which would have resulted from the last injury had there  
40 been no preexisting disability. After the compensation liability of the employer  
41 for the last injury, considered alone, has been determined by an administrative  
42 law judge or the commission, the degree or percentage of employee's disability  
43 that is attributable to all injuries or conditions existing at the time the last injury  
44 was sustained shall then be determined by that administrative law judge or by  
45 the commission and the degree or percentage of disability which existed prior to  
46 the last injury plus the disability resulting from the last injury, if any, considered  
47 alone, shall be deducted from the combined disability, and compensation for the  
48 balance, if any, shall be paid out of a special fund known as the second injury  
49 fund, hereinafter provided for. If the previous disability or disabilities, whether  
50 from compensable injury or otherwise, and the last injury together result in total  
51 and permanent disability, the minimum standards under this subsection for a  
52 body as a whole injury or a major extremity injury shall not apply and the  
53 employer at the time of the last injury shall be liable only for the disability  
54 resulting from the last injury considered alone and of itself; except that if the  
55 compensation for which the employer at the time of the last injury is liable is less  
56 than the compensation provided in this chapter for permanent total disability,

57 then in addition to the compensation for which the employer is liable and after  
58 the completion of payment of the compensation by the employer, the employee  
59 shall be paid the remainder of the compensation that would be due for permanent  
60 total disability under section 287.200 out of [a special fund known as the "Second  
61 Injury Fund" hereby created exclusively for the purposes as in this section  
62 provided and for special weekly benefits in rehabilitation cases as provided in  
63 section 287.141. Maintenance of the second injury fund shall be as provided by  
64 section 287.710. The state treasurer shall be the custodian of the second injury  
65 fund which shall be deposited the same as are state funds and any interest  
66 accruing thereon shall be added thereto. The fund shall be subject to audit the  
67 same as state funds and accounts and shall be protected by the general bond  
68 given by the state treasurer. Upon the requisition of the director of the division  
69 of workers' compensation, warrants on the state treasurer for the payment of all  
70 amounts payable for compensation and benefits out of the second injury fund  
71 shall be issued.

72 **2.] the second injury fund.**

73 **3. All claims against the second injury fund for injuries**  
74 **occurring after the effective date of this section and all claims against**  
75 **the second injury fund involving a subsequent compensable injury**  
76 **which is an occupational disease filed after the effective date of this**  
77 **section shall be compensated as provided in this subsection.**

78 **(1) No claims for permanent partial disability occurring after the**  
79 **effective date of this section shall be filed against the second injury**  
80 **fund. Claims for permanent total disability under section 287.200**  
81 **against the second injury fund shall be compensable only when the**  
82 **following conditions are met:**

83 **(a) An employee has a medically documented preexisting**  
84 **disability equaling a minimum of fifty weeks of permanent partial**  
85 **disability compensation according to the medical standards that are**  
86 **used in determining such compensation which is:**

87 **a. A direct result of active military duty in any branch of the**  
88 **United States armed forces; or**

89 **b. A direct result of a compensable injury as defined in section**  
90 **287.020; or**

91 **c. Not a compensable injury, but such preexisting disability**  
92 **directly and significantly aggravates or accelerates the subsequent**

93 work-related injury and shall not include unrelated preexisting injuries  
94 that do not aggravate or accelerate the subsequent work-related injury;  
95 or

96 d. A preexisting permanent partial disability of an extremity,  
97 loss of eyesight in one eye, or loss of hearing in one ear, when there is  
98 a subsequent compensable work-related injury as set forth in  
99 paragraph (b) of the opposite extremity, loss of eyesight in the other  
100 eye, or loss of hearing in the other ear; and

101 (b) Such employee thereafter sustains a subsequent compensable  
102 work-related injury that, when combined with the preexisting  
103 disability, as set forth in subparagraphs a, b, c, or d of paragraph (a) of  
104 this subdivision, results in a permanent total disability as defined  
105 under this chapter.

106 (2) When an employee is entitled to compensation as provided in  
107 this subsection, the employer at the time of the last work-related injury  
108 shall only be liable for the disability resulting from the subsequent  
109 work-related injury considered alone and of itself.

110 (3) Compensation for benefits payable under this subsection shall  
111 be based on the employee's compensation rate calculated under section  
112 287.250.

113 4. In all cases in which a recovery against the second injury fund is  
114 sought for permanent partial disability, permanent total disability, or death, the  
115 state treasurer as custodian thereof shall be named as a party, and shall be  
116 entitled to defend against the claim.

117 (1) The state treasurer, with the advice and consent of the attorney  
118 general of Missouri, may enter into **agreed statements of fact that would**  
119 **affect the second injury fund**, or compromise settlements as contemplated by  
120 section 287.390[, or agreed statements of fact that would affect the second injury  
121 fund. All awards for permanent partial disability, permanent total disability, or  
122 death affecting the second injury fund shall be subject to the provisions of this  
123 chapter governing review and appeal] **with the following limitations:**

124 (a) For all claims filed prior to the effective date of this section,  
125 with the exception of permanent total disability claims, such settlement  
126 may be made in any amount not to exceed sixty thousand dollars; or

127 (b) For all permanent total disability claims, such settlement may  
128 be made in any amount not to exceed the sum of two hundred times the  
129 employee's permanent total disability rate as of the date of the injury.

130           **(2) Notwithstanding subdivision (1) of this subsection to the**  
131 **contrary, the state treasurer, with the advice and consent of the**  
132 **attorney general and the state auditor, may enter into compromise**  
133 **settlements as contemplated by section 287.390 in any amount.**

134           **(3) The state treasurer, with the advice and consent of the**  
135 **attorney general and the state auditor, may enter into compromise**  
136 **settlements with dependents of claimants, whether finally adjudicated**  
137 **or not, arising from the Missouri supreme court's decision in Schoemehl**  
138 **v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).**

139           **(4) For all claims filed against the second injury fund on or after July 1,**  
140 **1994, the attorney general shall use assistant attorneys general except in**  
141 **circumstances where an actual or potential conflict of interest exists, to provide**  
142 **legal services as may be required in all claims made for recovery against the**  
143 **fund. Any legal expenses incurred by the attorney general's office in the handling**  
144 **of such claims, including, but not limited to, medical examination fees incurred**  
145 **under sections 287.210 and the expenses provided for under section**  
146 **287.140, expert witness fees, court reporter expenses, travel costs, and related**  
147 **legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of**  
148 **such legal expenses shall be contingent upon annual appropriations made by the**  
149 **general assembly, from the fund, to the attorney general's office for this specific**  
150 **purpose.**

151           **[3.] 5. If more than one injury in the same employment causes concurrent**  
152 **temporary disabilities, compensation shall be payable only for the longest and**  
153 **largest paying disability.**

154           **[4.] 6. If more than one injury in the same employment causes concurrent**  
155 **and consecutive permanent partial disability, compensation payments for each**  
156 **subsequent disability shall not begin until the end of the compensation period of**  
157 **the prior disability.**

158           **[5.] 7. If an employer fails to insure or self-insure as required in section**  
159 **287.280, funds from the second injury fund may be withdrawn to cover the fair,**  
160 **reasonable, and necessary expenses incurred relating to claims for injuries**  
161 **occurring prior to the effective date of this section, to cure and relieve the**  
162 **effects of the injury or disability of an injured employee in the employ of an**  
163 **uninsured employer consistent with subsection 3 of section 287.140, or in**  
164 **the case of death of an employee in the employ of an uninsured employer, funds**  
165 **from the second injury fund may be withdrawn to cover fair, reasonable, and**

166 necessary expenses **incurred relating to a death occurring prior to the**  
167 **effective date of this section**, in the manner required in sections 287.240 and  
168 287.241. In defense of claims arising under this subsection, the treasurer of the  
169 state of Missouri, as custodian of the second injury fund, shall have the same  
170 defenses to such claims as would the uninsured employer. Any funds received by  
171 the employee or the employee's dependents, through civil or other action, must  
172 go towards reimbursement of the second injury fund, for all payments made to the  
173 employee, the employee's dependents, or paid on the employee's behalf, from the  
174 second injury fund pursuant to this subsection. The office of the attorney general  
175 of the state of Missouri shall bring suit in the circuit court of the county in which  
176 the accident occurred against any employer not covered by this chapter as  
177 required in section 287.280.

178 [6.] 8. Every [three years] **year** the second injury fund shall have an  
179 actuarial study made to determine the solvency of the fund **taking into**  
180 **consideration any existing balance carried forward from a previous**  
181 **year**, appropriate funding level of the fund, and forecasted expenditures from the  
182 fund. The first actuarial study shall be completed prior to July 1, [1988]  
183 **2014**. The expenses of such actuarial studies shall be paid out of the fund for the  
184 support of the division of workers' compensation.

185 [7.] 9. The director of the division of workers' compensation shall  
186 maintain the financial data and records concerning the fund for the support of the  
187 division of workers' compensation and the second injury fund. The division shall  
188 also compile and report data on claims made pursuant to subsection 9 of this  
189 section. The attorney general shall provide all necessary information to the  
190 division for this purpose.

191 [8.] 10. All claims for fees and expenses filed against the second injury  
192 fund and all records pertaining thereto shall be open to the public.

193 [9.] 11. Any employee who at the time a compensable work-related injury  
194 is sustained **prior to the effective date of this section** is employed by more  
195 than one employer, the employer for whom the employee was working when the  
196 injury was sustained shall be responsible for wage loss benefits applicable only  
197 to the earnings in that employer's employment and the injured employee shall be  
198 entitled to file a claim against the second injury fund for any additional wage loss  
199 benefits attributed to loss of earnings from the employment or employments  
200 where the injury did not occur, up to the maximum weekly benefit less those  
201 benefits paid by the employer in whose employment the employee sustained the

202 injury. The employee shall be entitled to a total benefit based on the total  
203 average weekly wage of such employee computed according to subsection 8 of  
204 section 287.250. The employee shall not be entitled to a greater rate of  
205 compensation than allowed by law on the date of the injury. The employer for  
206 whom the employee was working where the injury was sustained shall be  
207 responsible for all medical costs incurred in regard to that injury.

208 **12. No compensation shall be payable from the second injury**  
209 **fund if the employee elects to pursue compensation under the workers'**  
210 **compensation law of another state with jurisdiction over the employee's**  
211 **injury or accident or occupational disease.**

212 **13. Notwithstanding the requirements of section 287.470, the life**  
213 **payments to an injured employee made from the fund shall be**  
214 **suspended when the employee is able to obtain suitable gainful**  
215 **employment or be self-employed in view of the nature and severity of**  
216 **the injury. The division shall promulgate rules setting forth a**  
217 **reasonable standard means test to determine if such employment**  
218 **warrants the suspension of benefits.**

219 **14. All awards issued under this chapter affecting the second**  
220 **injury fund shall be subject to the provisions of this chapter governing**  
221 **review and appeal.**

222 **15. Funds from the second injury fund shall be withdrawn to**  
223 **cover awards for toxic exposure issued pursuant to subdivisions (2) and**  
224 **(3) of subsection 4 of section 287.200. This subsection shall not be**  
225 **construed to cover awards for a disability otherwise provided in this**  
226 **chapter.**

227 **16. The division shall pay any liabilities of the fund other than**  
228 **those found in subsection 15 of this section, in the following priority:**

229 **(1) Expenses related to the legal defense of the fund under**  
230 **subsection 4 of this section;**

231 **(2) Permanent total disability awards in the order in which**  
232 **claims are settled or finally adjudicated;**

233 **(3) Permanent partial disability awards in the order in which**  
234 **such claims are settled or finally adjudicated;**

235 **(4) Medical expenses incurred prior to July 1, 2012, under**  
236 **subsection 7 of this section; and**

237 **(5) Interest on unpaid awards.**

238 **Such liabilities shall be paid to the extent the fund has a positive**

239 **balance. Any unpaid amounts shall remain an ongoing liability of the**  
240 **fund until satisfied.**

241 **17. Post award interest for the purpose of second injury fund**  
242 **claims shall be set at the adjusted rate of interest established by the**  
243 **director of revenue pursuant to section 32.065 or five percent,**  
244 **whichever is greater.**

287.610. 1. After August 28, 2005, the division may appoint additional  
2 administrative law judges for a maximum of forty authorized administrative law  
3 judges. Appropriations shall be based upon necessity, measured by the  
4 requirements and needs of each division office. Administrative law judges shall  
5 be duly licensed lawyers under the laws of this state. Administrative law judges  
6 shall not practice law or do law business and shall devote their whole time to the  
7 duties of their office. The director of the division of workers' compensation shall  
8 publish and maintain on the division's website the appointment dates or initial  
9 dates of service for all administrative law judges.

10 2. [The division director, as a member of the administrative law judge  
11 review committee, hereafter referred to as "the committee", shall perform, in  
12 conjunction with the committee, a performance audit of all administrative law  
13 judges by August 28, 2006. The division director, in conjunction with the  
14 committee, shall establish the written performance audit standards on or before  
15 October 1, 2005.

16 3.] The thirteen administrative law judges with the most years of service  
17 shall be subject to a retention vote on August 28, 2008. The next thirteen  
18 administrative law judges with the most years of service in descending order shall  
19 be subject to a retention vote on August 28, 2012. Administrative law judges  
20 appointed and not previously referenced in this subsection shall be subject to a  
21 retention vote on August 28, 2016. Subsequent retention votes shall be held  
22 every twelve years. Any administrative law judge who has received two or more  
23 votes of no confidence under performance audits by the committee shall not  
24 receive a vote of retention.

25 [4.] 3. The administrative law judge review committee members shall not  
26 have any direct or indirect employment or financial connection with a workers'  
27 compensation insurance company, claims adjustment company, health care  
28 provider nor be a practicing workers' compensation attorney. All members of the  
29 committee shall have a working knowledge of workers' compensation.

30 [5.] 4. The committee shall within thirty days of completing each



31 performance audit make a recommendation of confidence or no confidence for each  
32 administrative law judge.

33 [6.] 5. The administrative law judges appointed by the division shall only  
34 have jurisdiction to hear and determine claims upon original hearing and shall  
35 have no jurisdiction upon any review hearing, either in the way of an appeal from  
36 an original hearing or by way of reopening any prior award, except to correct a  
37 clerical error in an award or settlement if the correction is made by the

38 administrative law judge within twenty days of the original award or  
39 settlement. The labor and industrial relations commission may remand any  
40 decision of an administrative law judge for a more complete finding of facts.  
41 The commission may also correct a clerical error in awards or settlements within  
42 thirty days of its final award. With respect to original hearings, the  
43 administrative law judges shall have such jurisdiction and powers as are vested  
44 in the division of workers' compensation under other sections of this chapter, and  
45 wherever in this chapter the word "commission", "commissioners" or "division" is  
46 used in respect to any original hearing, those terms shall mean the  
47 administrative law judges appointed under this section. When a hearing is  
48 necessary upon any claim, the division shall assign an administrative law judge  
49 to such hearing. Any administrative law judge shall have power to approve  
50 contracts of settlement, as provided by section 287.390, between the parties to  
51 any compensation claim or dispute under this chapter pending before the division  
52 of workers' compensation. Any award by an administrative law judge upon an  
53 original hearing shall have the same force and effect, shall be enforceable in the  
54 same manner as provided elsewhere in this chapter for awards by the labor and  
55 industrial relations commission, and shall be subject to review as provided by  
56 section 287.480.

57 [7.] 6. Any of the administrative law judges employed pursuant to this  
58 section may be assigned on a temporary basis to the branch offices as necessary  
59 in order to ensure the proper administration of this chapter.

60 [8.] 7. All administrative law judges shall be required to participate in,  
61 on a continuing basis, specific training that shall pertain to those elements of  
62 knowledge and procedure necessary for the efficient and competent performance  
63 of the administrative law judges' required duties and responsibilities. Such  
64 training requirements shall be established by the division subject to  
65 appropriations and shall include training in medical determinations and records,  
66 mediation and legal issues pertaining to workers' compensation

67 adjudication. Such training may be credited toward any continuing legal  
68 education requirements.

69 [9.] 8. (1) [The director of the division, in conjunction with] The  
70 administrative law judge review committee[,] shall conduct a performance audit  
71 of all administrative law judges every two years. The audit results, stating the  
72 committee's recommendation of confidence or no confidence of each administrative  
73 law judge shall be sent to the governor no later than the first week of each  
74 legislative session immediately following such audit. Any administrative law  
75 judge who has received [two] **three** or more votes of no confidence under **two**  
76 **successive** performance audits by the committee may have their appointment  
77 immediately withdrawn.

78 (2) The review committee shall consist of [the division director, who shall  
79 be appointed by the governor,] one member appointed by the president pro tem  
80 of the senate, one member appointed by the minority leader of the senate, one  
81 member appointed by the speaker of the house of representatives, and one  
82 member appointed by the minority leader of the house of representatives. The  
83 governor shall appoint to the committee one member selected from the  
84 commission on retirement, removal, and discipline of judges. This member shall  
85 act as a member ex-officio and shall not have a vote in the committee. [The  
86 division director shall serve as the chairperson of the committee, and shall serve  
87 on the committee during the time of employment in such position.] **The**  
88 **committee shall annually elect a chairperson from its members for a**  
89 **term of one year.** The term of service for all [other] members shall be two  
90 years. The review committee members shall all serve without  
91 compensation. Necessary expenses for review committee members and all  
92 necessary support services to the review committee shall be provided by the  
93 division.

94 [10.] 9. No rule or portion of a rule promulgated pursuant to the  
95 authority of this section shall become effective unless it has been promulgated  
96 pursuant to the provisions of chapter 536.

287.690. [1.] Prior to December 31, 1993, for the purpose of providing for  
2 the expense of administering this chapter [and for the purpose set out in  
3 subsection 2 of this section], every person, partnership, association, corporation,  
4 whether organized under the laws of this or any other state or country, the state  
5 of Missouri, including any of its departments, divisions, agencies, commissions,  
6 and boards or any political subdivisions of the state who self-insure or hold

7 themselves out to be any part self-insured, company, mutual company, the parties  
8 to any interindemnity contract, or other plan or scheme, and every other  
9 insurance carrier, insuring employers in this state against liability for personal  
10 injuries to their employees, or for death caused thereby, under this chapter, shall  
11 pay, as provided in this chapter, tax upon the net deposits, net premiums or net  
12 assessments received, whether in cash or notes in this state, or on account of  
13 business done in this state, for such insurance in this state at the rate of two  
14 percent in lieu of all [other] **premium** taxes on such net deposits, net premiums  
15 or net assessments, which amount of taxes shall be assessed and collected as  
16 herein provided. Beginning October 31, 1993, and every year thereafter, the  
17 director of the division of workers' compensation shall estimate the amount of  
18 revenue required to administer this chapter and the **division** director shall  
19 determine the rate of tax to be paid in the following calendar year pursuant to  
20 this section commencing with the calendar year beginning on January 1, 1994. If  
21 the balance of the fund [estimated to be] on hand on [December thirty-first] **July**  
22 **first** of the year each tax rate determination is made **on October thirty-first**  
23 is less than one hundred ten percent of the previous year's expenses plus any  
24 additional revenue required due to new statutory requirements given to the  
25 division by the general assembly, then the **division** director shall impose a tax  
26 not to exceed two percent in lieu of all other taxes on net deposits, net premiums  
27 or net assessments, rounded up to the nearest one-half of a percentage point,  
28 which amount of taxes shall be assessed and collected as herein provided. The  
29 net premium equivalent for individual self-insured employers and any group of  
30 political subdivisions of this state qualified to self-insure their liability pursuant  
31 to this chapter as authorized by section 537.620 shall be based on average rate  
32 classifications calculated by the department of insurance, financial institutions  
33 and professional registration as taken from premium rates filed by the twenty  
34 insurance companies providing the greatest volume of workers' compensation  
35 insurance coverage in this state. For employers qualified to self-insure their  
36 liability pursuant to this chapter, the rates filed by such group of employers in  
37 accordance with subsection 2 of section 287.280 shall be the net premium  
38 equivalent. Every entity required to pay the tax imposed pursuant to this section  
39 and section 287.730 shall be notified by the division of workers' compensation  
40 within ten calendar days of the date of the determination of the rate of tax to be  
41 imposed for the following year. Net premiums, net deposits or net assessments  
42 are defined as gross premiums, gross deposits or gross assessments less canceled

43 or returned premiums, premium deposits or assessments and less dividends or  
44 savings, actually paid or credited.

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

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

13 2. Beginning October 31, 2005, and each year thereafter, the director of  
14 the division of workers' compensation shall estimate the amount of benefits  
15 payable from the second injury fund during the following calendar year and shall  
16 calculate the total amount of the annual surcharge to be imposed during the  
17 following calendar year upon all workers' compensation policyholders and  
18 authorized self-insurers. The amount of the annual surcharge percentage to be  
19 imposed upon each policyholder and self-insured for the following calendar year  
20 commencing with the calendar year beginning on January 1, 2006, shall be set at  
21 and calculated against a percentage, not to exceed three percent, of the  
22 policyholder's or self-insured's workers' compensation net deposits, net premiums,  
23 or net assessments for the previous policy year, rounded up to the nearest  
24 one-half of a percentage point, that shall generate, as nearly as possible, one

25 hundred ten percent of the moneys to be paid from the second injury fund in the  
26 following calendar year, less any moneys contained in the fund at the end of the  
27 previous calendar year. All policyholders and self-insurers shall be notified by  
28 the division of workers' compensation within ten calendar days of the  
29 determination of the surcharge percent to be imposed for, and paid in, the  
30 following calendar year. The net premium equivalent for individual self-insured  
31 employers and any group of political subdivisions of this state qualified to  
32 self-insure their liability pursuant to this chapter as authorized by section  
33 537.620 shall be based on average rate classifications calculated by the  
34 department of insurance, financial institutions and professional registration as  
35 taken from premium rates filed by the twenty insurance companies providing the  
36 greatest volume of workers' compensation insurance coverage in this state. For  
37 employers qualified to self-insure their liability pursuant to this chapter, the  
38 rates filed by such group of employers in accordance with subsection 2 of section  
39 287.280 shall be the net premium equivalent. The director may advance funds  
40 from the workers' compensation fund to the second injury fund if surcharge  
41 collections prove to be insufficient. Any funds advanced from the workers'  
42 compensation fund to the second injury fund must be reimbursed by the second  
43 injury fund no later than December thirty-first of the year following the  
44 advance. The surcharge shall be collected from policyholders by each insurer at  
45 the same time and in the same manner that the premium is collected, but no  
46 insurer or its agent shall be entitled to any portion of the surcharge as a fee or  
47 commission for its collection. The surcharge is not subject to any taxes, licenses  
48 or fees.

49 3. All surcharge amounts imposed by this section shall be deposited to the  
50 credit of the second injury fund.

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

59 5. If a policyholder or self-insured fails to make payment of the surcharge  
60 or an insurer fails to make timely transfer to the division of surcharges actually

61 collected from policyholders, as required by this section, a penalty of one-half of  
62 one percent of the surcharge unpaid, or untransferred, shall be assessed against  
63 the liable policyholder, self-insured or insurer. Penalties assessed under this  
64 subsection shall be collected in a civil action by a summary proceeding brought  
65 by the director of the division of workers' compensation.

66 **6. In order to maintain the fiscal solvency of the second injury**  
67 **fund, should the anticipated collections authorized in subsection 2 of**  
68 **this section fail to be sufficient to meet its current and anticipated**  
69 **legal obligations, provide funds to settle cases, and provide funds for**  
70 **the administration of the fund for the third and fourth quarter of**  
71 **calendar year 2013 and for calendar years 2014, 2015, 2016, 2017, 2018,**  
72 **2019, and 2020, the director of the division of workers' compensation,**  
73 **shall determine the amount of revenue so required. Notwithstanding**  
74 **subsection 2 of this section to the contrary, such necessary funds as**  
75 **determined by the director of the division of workers' compensation**  
76 **shall be collected with a supplemental surcharge, not to exceed one and**  
77 **one-half percent for the calendar year 2013 and not to exceed three**  
78 **percent for the remaining calendar years through 2020. All**  
79 **policyholders and self-insurers shall be notified by the division of**  
80 **workers' compensation of the supplemental surcharge percent to be**  
81 **imposed for such period of time as part of the notice provided in**  
82 **subsection 2 of this section, except for the supplemental surcharge**  
83 **percent for the third and fourth quarters of calendar year 2013 for**  
84 **which notice shall be provided within ten calendar days of the**  
85 **determination of the supplemental surcharge to be imposed for those**  
86 **quarters. The provisions of this subsection shall expire on December**  
87 **31, 2020.**

88 **7. Beginning July 1, 2013, and each calendar year thereafter, the**  
89 **director of the division of workers compensation shall estimate the**  
90 **amount of benefits payable from the second injury fund relating to**  
91 **awards issued pursuant to subdivisions (2) and (3) of subsection 4 of**  
92 **section 287.200 during the following calendar year and shall calculate**  
93 **the total amount of the second injury fund surcharge to be imposed**  
94 **during the following calendar year upon all workers' compensation**  
95 **policyholders and authorized self-insurers. Notwithstanding**  
96 **subsections 2 and 6 of this section to the contrary, such surcharge shall**  
97 **be set by the director based on the average number of awards for such**

98 **diseases in the three years preceding the year in which such rates are**  
99 **set, multiplied by the benefit allowed in subdivisions (2) and (3) of**  
100 **subsection 4 of section 287.200. In addition, the surcharge shall be**  
101 **increased in an amount to collect a cash reserve of up to fifty percent**  
102 **of the surcharge established in this section, until such time that a one**  
103 **year reserve has been accumulated. All revenue collected under this**  
104 **subsection shall be deposited in the subaccount established in**  
105 **subsection 1 of section 287.220 and such revenue shall only be used to**  
106 **satisfy awards issued pursuant to subdivisions (2) and (3) of subsection**  
107 **4 of section 287.200. All policyholders and self-insurers shall be notified**  
108 **by the division of workers' compensation of the toxic exposure**  
109 **supplemental surcharge percent to be imposed for such period of time**  
110 **as part of the notice provided in subsections 2 and 6 of this section.**

111 **8. Funds collected under the provisions of this chapter shall be**  
112 **the sole funding source of the second injury fund.**

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715  
2 are not paid when due, the taxpayer shall be required to pay, as part of such tax,  
3 interest thereon at the rate of one and one-half percent per month for each month  
4 or fraction thereof delinquent. In the event the state prevails in any dispute  
5 concerning an assessment of tax which has not been paid by the taxpayer,  
6 interest shall be paid upon the amount found due to the state at the rate of one  
7 and one-half percent per month for each month or fraction thereof delinquent.

8 2. In any legal contest concerning the amount of tax under sections  
9 287.690, 287.710 and 287.715 for a calendar year, the quarterly installments for  
10 the following year shall continue to be made based upon the amount assessed by  
11 the director of revenue for the year in question. If after the end of any taxable  
12 year, the amount of the actual tax due is less than the total amount of the  
13 installments actually paid, the amount by which the amount paid exceeds the  
14 amount due shall **at the election of the taxpayer be refunded or** credited  
15 against the tax for the following year and **in the event of a credit,** deducted  
16 from the quarterly installment otherwise due on June first.

Section B. Because it is necessary to ensure the solvency of the second  
2 injury fund, the repeal and reenactment of sections 287.220 and 287.715 of this  
3 act is deemed necessary for the immediate preservation of the public health,  
4 welfare, peace and safety, and is hereby declared to be an emergency act within  
5 the meaning of the constitution, and the repeal and reenactment of sections

6 287.220 and 287.715 of this act shall be in full force and effect upon its passage  
7 and approval.

✓

Unofficial

Bill

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