

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1

97TH GENERAL ASSEMBLY

2013

0225S.12T

AN ACT

To repeal sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.280, 287.610, 287.715, 287.745, and 287.955, RSMo, and to enact in lieu thereof fourteen new sections relating to workers' compensation, with an existing penalty provision and an effective date.

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287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.280, 287.610, 287.715, 287.745, and 287.955, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.223, 287.280, 287.610, 287.715, 287.745, and 287.955, 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 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

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

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. **The word**
17 **"employee" also shall not include any person performing services for**
18 **board, lodging, aid, or sustenance received from any religious,**
19 **charitable, or relief 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**
93 **to toxic exposure" shall only include the following: mesothelioma,**
94 **asbestosis, berylliosis, coal worker's pneumoconiosis, bronchiolitis**
95 **obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous**
96 **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 **or**
43 **paid peace officers of a police department who are certified under**
44 **chapter 590** if a direct causal relationship is established.

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

48 8. With regard to occupational disease due to repetitive motion, if the
49 exposure to the repetitive motion which is found to be the cause of the injury is
50 for a period of less than three months and the evidence demonstrates that the
51 exposure to the repetitive motion with the immediate prior employer was the
52 prevailing factor in causing the injury, the prior employer shall be liable for such
53 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 first notice of dispute of the**
57 **medical charge was received by the health care provider if such**
58 **services were rendered before July 1, 2013; and**

59 **(2) One year from the date the first notice of dispute of the**
60 **medical charge was received by the health care provider if such**
61 **services were rendered after July 1, 2013. Notice shall be presumed to**
62 **occur no later than five business days after transmission by certified**
63 **United States mail.**

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

70 shall be deemed to be caused by the injury.

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

74 7. Every hospital or other person furnishing the employee with medical
75 aid shall permit its record to be copied by and shall furnish full information to
76 the division or the commission, the employer, the employee or his dependents and
77 any other party to any proceedings for compensation under this chapter, and
78 certified copies of the records shall be admissible in evidence in any such
79 proceedings.

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

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

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

102 11. Any physician or other health care provider who orders, directs or
103 refers a patient for treatment, testing, therapy or rehabilitation at any institution
104 or facility shall, at or prior to the time of the referral, disclose in writing if such
105 health care provider, any of his partners or his employer has a financial interest

106 in the institution or facility to which the patient is being referred, to the
107 following:

- 108 (1) The patient;
- 109 (2) The employer of the patient with workers' compensation liability for
110 the injury or disease being treated;
- 111 (3) The workers' compensation insurer of such employer; and
- 112 (4) The workers' compensation adjusting company for such insurer.

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

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

125 (2) The notice shall include:

- 126 (a) The name of the employer;
- 127 (b) The name of the insurer, if known;
- 128 (c) The name of the employee receiving the services;
- 129 (d) The general nature of the injury, if known; and
- 130 (e) Where a claim has been filed, the claim number, if known.

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

141 (4) If a hospital, physician or other health care provider or a debt collector

142 on behalf of such hospital, physician or other health care provider pursues any
143 action to collect from an employee after such notice is properly given, the
144 employee shall have a cause of action against the hospital, physician or other
145 health care provider for actual damages sustained plus up to one thousand
146 dollars in additional damages, costs and reasonable attorney's fees.

147 (5) If an employer or insurer fails to make payment for authorized
148 services provided to the employee by a hospital, physician or other health care
149 provider pursuant to this chapter, the hospital, physician or other health care
150 provider may proceed pursuant to subsection 4 of this section with a dispute
151 against the employer or insurer for any fees or other charges for services
152 provided.

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

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

287.150. 1. Where a third person is liable to the employee or to the
2 dependents, for the injury or death, the employer shall be subrogated to the right
3 of the employee or to the dependents against such third person, and the recovery
4 by such employer shall not be limited to the amount payable as compensation to
5 such employee or dependents, but such employer may recover any amount which
6 such employee or his dependents would have been entitled to recover. Any
7 recovery by the employer against such third person shall be apportioned between
8 the employer and employee or his dependents using the provisions of subsections
9 2 and 3 of this section.

10 2. When a third person is liable for the death of an employee and
11 compensation is paid or payable under this chapter, and recovery is had by a

12 dependent under this chapter either by judgment or settlement for the wrongful
13 death of the employee, the employer shall have a subrogation lien on any recovery
14 and shall receive or have credit for sums paid or payable under this chapter to
15 any of the dependents of the deceased employee to the extent of the settlement
16 or recovery by such dependents for the wrongful death. Recovery by the employer
17 and credit for future installments shall be computed using the provisions of
18 subsection 3 of this section relating to comparative fault of the employee.

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

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

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

42 4. In any case in which an injured employee has been paid benefits from
43 the second injury fund as provided in subsection 3 of section 287.141, and
44 recovery is had against the third party liable to the employee for the injury, the
45 second injury fund shall be subrogated to the rights of the employee against said
46 third party to the extent of the payments made to him from such fund, subject to
47 provisions of subsections 2 and 3 of this section.

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

58 6. Any provision in any contract or subcontract, where one party is an
59 employer in the construction group of code classifications, which purports to
60 waive subrogation rights provided under this section in anticipation of a future
61 injury or death is hereby declared against public policy and void. Each contract
62 of insurance for workers' compensation shall require the insurer to diligently
63 pursue all subrogation rights of the employer and shall require the employer to
64 fully cooperate with the insurer in pursuing such recoveries, except that the
65 employer may enter into compromise agreements with an insurer in lieu of the
66 insurer pursuing subrogation against another party. The amount of any
67 subrogation recovery by an insurer shall be credited against the amount of the
68 actual paid losses in the determination of such employer's experience modification
69 factor within forty-five days of the collection of such amount.

70 **7. Notwithstanding any other provision of this section, when a**
71 **third person or party is liable to the employee, to the dependents of an**
72 **employee, or to any person eligible to sue for the employer's wrongful**
73 **death as provided in section 537.080 in a case where the employee**
74 **suffers or suffered from an occupational disease due to toxic exposure**
75 **and the employee, dependents, or persons eligible to sue for wrongful**
76 **death are compensated under this chapter, in no case shall the**
77 **employer then be subrogated to the rights of an employee, dependents,**
78 **or persons eligible to sue for wrongful death against such third person**
79 **or party when the occupational disease due to toxic exposure arose**
80 **from the employee's work for employer.**

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

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

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

72 (a) **For employers that have elected to accept mesothelioma**
73 **liability under this subsection, an additional amount of three hundred**
74 **percent of the state's average weekly wage for two hundred twelve**
75 **weeks shall be paid by the employer or group of employers such**

76 employer is a member of. Employers that elect to accept mesothelioma
77 liability under this subsection may do so by either insuring their
78 liability, by qualifying as a self-insurer, or by becoming a member of a
79 group insurance pool. A group of employers may enter into an
80 agreement to pool their liabilities under this subsection. If such group
81 is joined, individual members shall not be required to qualify as
82 individual self-insurers. Such group shall comply with section 287.223.
83 In order for an employer to make such an election, the employer shall
84 provide the department with notice of such an election in a manner
85 established by the department. The provisions of this paragraph shall
86 expire on December 31, 2038; or

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

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

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

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

109 5. Any employee who obtains benefits under subdivision (2) of
110 subsection 4 of this section for acquiring asbestosis who later obtains
111 an award for mesothelioma, shall not receive more benefits than such
112 employee would receive having only obtained benefits for mesothelioma

113 **under this section.**

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. Maintenance of
5 the second injury fund shall be as provided by section 287.710. The
6 state treasurer shall be the custodian of the second injury fund which
7 shall be deposited the same as are state funds and any interest
8 accruing thereon shall be added thereto. The fund shall be subject to
9 audit the same as state funds and accounts and shall be protected by
10 the general bond given by the state treasurer. Upon the requisition of
11 the director of the division of workers' compensation, warrants on the**

12 **state treasurer for the payment of all amounts payable for**
13 **compensation and benefits out of the second injury fund shall be**
14 **issued.**

15 **2.** All cases of permanent disability where there has been previous
16 disability **due to injuries occurring prior to the effective date of this**
17 **section** shall be compensated as [herein] provided **in this**
18 **subsection.** Compensation shall be computed on the basis of the average
19 earnings at the time of the last injury. If any employee who has a preexisting
20 permanent partial disability whether from compensable injury or otherwise, of
21 such seriousness as to constitute a hindrance or obstacle to employment or to
22 obtaining reemployment if the employee becomes unemployed, and the preexisting
23 permanent partial disability, if a body as a whole injury, equals a minimum of
24 fifty weeks of compensation or, if a major extremity injury only, equals a
25 minimum of fifteen percent permanent partial disability, according to the medical
26 standards that are used in determining such compensation, receives a subsequent
27 compensable injury resulting in additional permanent partial disability so that
28 the degree or percentage of disability, in an amount equal to a minimum of fifty
29 weeks compensation, if a body as a whole injury or, if a major extremity injury
30 only, equals a minimum of fifteen percent permanent partial disability, caused
31 by the combined disabilities is substantially greater than that which would have
32 resulted from the last injury, considered alone and of itself, and if the employee
33 is entitled to receive compensation on the basis of the combined disabilities, the
34 employer at the time of the last injury shall be liable only for the degree or
35 percentage of disability which would have resulted from the last injury had there
36 been no preexisting disability. After the compensation liability of the employer
37 for the last injury, considered alone, has been determined by an administrative
38 law judge or the commission, the degree or percentage of employee's disability
39 that is attributable to all injuries or conditions existing at the time the last injury
40 was sustained shall then be determined by that administrative law judge or by
41 the commission and the degree or percentage of disability which existed prior to
42 the last injury plus the disability resulting from the last injury, if any, considered
43 alone, shall be deducted from the combined disability, and compensation for the
44 balance, if any, shall be paid out of a special fund known as the second injury
45 fund, hereinafter provided for. If the previous disability or disabilities, whether
46 from compensable injury or otherwise, and the last injury together result in total
47 and permanent disability, the minimum standards under this subsection for a

48 body as a whole injury or a major extremity injury shall not apply and the
49 employer at the time of the last injury shall be liable only for the disability
50 resulting from the last injury considered alone and of itself; except that if the
51 compensation for which the employer at the time of the last injury is liable is less
52 than the compensation provided in this chapter for permanent total disability,
53 then in addition to the compensation for which the employer is liable and after
54 the completion of payment of the compensation by the employer, the employee
55 shall be paid the remainder of the compensation that would be due for permanent
56 total disability under section 287.200 out of [a special fund known as the "Second
57 Injury Fund" hereby created exclusively for the purposes as in this section
58 provided and for special weekly benefits in rehabilitation cases as provided in
59 section 287.141. Maintenance of the second injury fund shall be as provided by
60 section 287.710. The state treasurer shall be the custodian of the second injury
61 fund which shall be deposited the same as are state funds and any interest
62 accruing thereon shall be added thereto. The fund shall be subject to audit the
63 same as state funds and accounts and shall be protected by the general bond
64 given by the state treasurer. Upon the requisition of the director of the division
65 of workers' compensation, warrants on the state treasurer for the payment of all
66 amounts payable for compensation and benefits out of the second injury fund
67 shall be issued.

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

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

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

79 **(a) a. An employee has a medically documented preexisting**
80 **disability equaling a minimum of fifty weeks of permanent partial**
81 **disability compensation according to the medical standards that are**
82 **used in determining such compensation which is:**

83 **i. A direct result of active military duty in any branch of the**

84 **United States armed forces; or**

85 **ii. A direct result of a compensable injury as defined in section**
86 **287.020; or**

87 **iii. Not a compensable injury, but such preexisting disability**
88 **directly and significantly aggravates or accelerates the subsequent**
89 **work-related injury and shall not include unrelated preexisting injuries**
90 **or conditions that do not aggravate or accelerate the subsequent work-**
91 **related injury; or**

92 **iv. A preexisting permanent partial disability of an extremity,**
93 **loss of eyesight in one eye, or loss of hearing in one ear, when there is**
94 **a subsequent compensable work-related injury as set forth in**
95 **subparagraph b of the opposite extremity, loss of eyesight in the other**
96 **eye, or loss of hearing in the other ear; and**

97 **b. Such employee thereafter sustains a subsequent compensable**
98 **work-related injury that, when combined with the preexisting**
99 **disability, as set forth in items i, ii, iii, or iv of subparagraph a of this**
100 **paragraph, results in a permanent total disability as defined under this**
101 **chapter; or**

102 **(b) An employee is employed in a sheltered workshop as**
103 **established in sections 205.968 to 205.972 or sections 178.900 to 178.960**
104 **and such employee thereafter sustains a compensable work-related**
105 **injury that, when combined with the preexisting disability, results in**
106 **a permanent total disability as defined under this chapter.**

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

111 **(3) Compensation for benefits payable under this subsection shall**
112 **be based on the employee's compensation rate calculated under section**
113 **287.250.**

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

118 **(1) The state treasurer, with the advice and consent of the attorney**
119 **general of Missouri, may enter into 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.

124 **(2)** For all claims filed against the second injury fund on or after July 1,
125 1994, the attorney general shall use assistant attorneys general except in
126 circumstances where an actual or potential conflict of interest exists, to provide
127 legal services as may be required in all claims made for recovery against the
128 fund. Any legal expenses incurred by the attorney general's office in the handling
129 of such claims, including, but not limited to, medical examination fees **incurred**
130 **under sections 287.210 and the expenses provided for under section**
131 **287.140**, expert witness fees, court reporter expenses, travel costs, and related
132 legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of
133 such legal expenses shall be contingent upon annual appropriations made by the
134 general assembly, from the fund, to the attorney general's office for this specific
135 purpose.

136 **[3.] 5.** If more than one injury in the same employment causes concurrent
137 temporary disabilities, compensation shall be payable only for the longest and
138 largest paying disability.

139 **[4.] 6.** If more than one injury in the same employment causes concurrent
140 and consecutive permanent partial disability, compensation payments for each
141 subsequent disability shall not begin until the end of the compensation period of
142 the prior disability.

143 **[5.] 7.** If an employer fails to insure or self-insure as required in section
144 287.280, funds from the second injury fund may be withdrawn to cover the fair,
145 reasonable, and necessary expenses **incurred relating to claims for injuries**
146 **occurring prior to the effective date of this section**, to cure and relieve the
147 effects of the injury or disability of an injured employee in the employ of an
148 uninsured employer **consistent with subsection 3 of section 287.140**, or in
149 the case of death of an employee in the employ of an uninsured employer, funds
150 from the second injury fund may be withdrawn to cover fair, reasonable, and
151 necessary expenses **incurred relating to a death occurring prior to the**
152 **effective date of this section**, in the manner required in sections 287.240 and
153 287.241. In defense of claims arising under this subsection, the treasurer of the
154 state of Missouri, as custodian of the second injury fund, shall have the same
155 defenses to such claims as would the uninsured employer. Any funds received by
156 the employee or the employee's dependents, through civil or other action, must

157 go towards reimbursement of the second injury fund, for all payments made to the
158 employee, the employee's dependents, or paid on the employee's behalf, from the
159 second injury fund pursuant to this subsection. The office of the attorney general
160 of the state of Missouri shall bring suit in the circuit court of the county in which
161 the accident occurred against any employer not covered by this chapter as
162 required in section 287.280.

163 [6.] 8. Every [three years] **year** the second injury fund shall have an
164 actuarial study made to determine the solvency of the fund **taking into**
165 **consideration any existing balance carried forward from a previous**
166 **year**, appropriate funding level of the fund, and forecasted expenditures from the
167 fund. The first actuarial study shall be completed prior to July 1, [1988]
168 **2014**. The expenses of such actuarial studies shall be paid out of the fund for the
169 support of the division of workers' compensation.

170 [7.] 9. The director of the division of workers' compensation shall
171 maintain the financial data and records concerning the fund for the support of the
172 division of workers' compensation and the second injury fund. The division shall
173 also compile and report data on claims made pursuant to subsection [9] 11 of this
174 section. The attorney general shall provide all necessary information to the
175 division for this purpose.

176 [8.] 10. All claims for fees and expenses filed against the second injury
177 fund and all records pertaining thereto shall be open to the public.

178 [9.] 11. Any employee who at the time a compensable work-related injury
179 is sustained **prior to the effective date of this section** is employed by more
180 than one employer, the employer for whom the employee was working when the
181 injury was sustained shall be responsible for wage loss benefits applicable only
182 to the earnings in that employer's employment and the injured employee shall be
183 entitled to file a claim against the second injury fund for any additional wage loss
184 benefits attributed to loss of earnings from the employment or employments
185 where the injury did not occur, up to the maximum weekly benefit less those
186 benefits paid by the employer in whose employment the employee sustained the
187 injury. The employee shall be entitled to a total benefit based on the total
188 average weekly wage of such employee computed according to subsection 8 of
189 section 287.250. The employee shall not be entitled to a greater rate of
190 compensation than allowed by law on the date of the injury. The employer for
191 whom the employee was working where the injury was sustained shall be
192 responsible for all medical costs incurred in regard to that injury.

193 **12. No compensation shall be payable from the second injury**
194 **fund if the employee files a claim for compensation under the workers'**
195 **compensation law of another state with jurisdiction over the employee's**
196 **injury or accident or occupational disease.**

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

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

207 **15. The division shall pay any liabilities of the fund in the**
208 **following priority:**

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

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

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

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

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

218 **Such liabilities shall be paid to the extent the fund has a positive**
219 **balance. Any unpaid amounts shall remain an ongoing liability of the**
220 **fund until satisfied.**

221 **16. Post award interest for the purpose of second injury fund**
222 **claims shall be set at the adjusted rate of interest established by the**
223 **director of revenue pursuant to section 32.065 or five percent,**
224 **whichever is greater.**

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

6 carry out fully and effectively all the purposes of this section.

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

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

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

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

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

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

28 (2) Attorney's fees and expenses incurred in the administration
29 and representation of the fund.

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

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

43 in such year. If ongoing benefits are due by the fund for an employer
44 who fail to make a yearly contribution, such employer shall be liable to
45 the fund for the ongoing benefits.

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

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

63 9. The board may contract with independent insurance agents,
64 authorizing such agents to accept contributions to the fund from
65 employers on behalf of the board upon such terms and conditions as the
66 board deems necessary, and may provide a reasonable method of
67 compensating such agents. Such compensation shall not be additional
68 to the contribution to the fund.

69 10. There is hereby established a "Board of Trustees of the
70 Missouri Mesothelioma Risk Management Fund" which shall consist of
71 the director of the department of labor, and four members, appointed
72 by the governor with the advice and consent of the senate, who are
73 officers or employees of those employers participating in the fund. No
74 more than two members appointed by the governor shall be of the same
75 political party. The members appointed by the governor shall serve
76 four-year terms, except that the original appointees shall be appointed
77 for the following terms: one for one year, one for two years, one for
78 three years, and one for four years. Any vacancies occurring on the
79 board shall be filled in the same manner. In appointing the initial

80 board of trustees the governor may anticipate which public entities will
81 participate in the fund, and the appointees may serve the terms
82 designated herein, unless they sooner resign or are removed in
83 accordance with law.

84 11. No trustee shall be liable personally in any way with respect
85 to claims made against the fund or against member employers covered
86 by the fund.

87 12. The board shall elect one of their members as chairman. He
88 or she shall preside over meetings of the board and perform such other
89 duties as shall be required by action of the board.

90 13. The chairman shall appoint another board member as vice
91 chairman, and the vice chairman shall perform the duties of the
92 chairman in the absence of the latter or upon his inability or refusal to
93 act.

94 14. The board shall appoint a secretary who shall have charge of
95 the offices and records of the fund, subject to the direction of the
96 board.

97 15. The board shall meet in Jefferson City, Missouri, upon the
98 written call of the chairman or by the agreement of any three members
99 of the board. Notice of the meeting shall be delivered to all other
100 trustees in person or by depositing notice in a United States post office
101 in a properly stamped and addressed envelope not less than six days
102 prior to the date fixed for the meeting. The board may meet at any
103 time by unanimous mutual consent.

104 16. Three trustees shall constitute a quorum for the transaction
105 of business, and any official action of the board shall be based on a
106 majority vote of the trustees present.

107 17. The trustees shall serve without compensation but shall
108 receive from the fund their actual and necessary expenses incurred in
109 the performance of their duties for the board.

110 18. Duties performed for the fund by any member of the board
111 who is an employee of a member employer shall be considered duties
112 in connection with the regular employment of such employer, and such
113 person shall suffer no loss in regular compensation by reason of the
114 performance of such duties.

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

116 20. A statement covering the operations of the fund for the year,

117 including income and disbursements, and of the financial condition of
118 the fund at the end of the year, showing the valuation and appraisal of
119 its assets and liabilities, as of July first, shall each year be delivered to
120 the governor and be made readily available to public entities.

121 21. The general administration of, and responsibility for, the
122 proper operation of the fund, including all decisions relating to
123 payments from the fund, are hereby vested in the board of trustees.

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

127 23. The board shall have exclusive jurisdiction and control over
128 the funds and property of the fund.

129 24. No trustee or staff member of the fund shall receive any gain
130 or profit from any moneys or transactions of the fund.

131 25. Any trustee or staff member accepting any gratuity or
132 compensation for the purpose of influencing his or her action with
133 respect to the investment of the funds of the system or in the
134 operations of the fund shall forfeit his or her office.

135 26. The board shall have the authority to use moneys from the
136 fund to purchase one or more policies of insurance or reinsurance to
137 cover the liabilities of participating employers members which are
138 covered by the fund. If such insurance can be procured, the board shall
139 have the authority to procure insurance covering participating member
140 employers per occurrence for liabilities covered by the fund. The costs
141 of such insurance shall be considered in determining the contribution
142 of each employer member.

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

146 28. The board shall set up and maintain a Missouri mesothelioma
147 risk management fund account in which shall be placed all
148 contributions, premiums, and income from all sources. All property,
149 money, funds, investments, and rights which shall belong to, or be
150 available for expenditure or use by, the fund shall be dedicated to and
151 held in trust for the purposes set out in this section and no other. The
152 board shall have power, in the name of and on behalf of the fund, to
153 purchase, acquire, hold, invest, lend, lease, sell, assign, transfer, and

154 **dispose of all property, rights, and securities, and enter into written**
155 **contracts, all as may be necessary or proper to carry out the purposes**
156 **of this section.**

157 **29. All moneys received by or belonging to the fund shall be paid**
158 **to the secretary and deposited by him or her to the credit of the fund**
159 **in one or more banks or trust companies. No such money shall be**
160 **deposited in or be retained by any bank and trust company which does**
161 **not have on deposit with the board at the time the kind and value of**
162 **collateral required by section 30.270 for depositories of the state**
163 **treasurer. The secretary shall be responsible for all funds, securities,**
164 **and property belonging to the fund, and shall give such corporate**
165 **surety bond for the faithful handling of the same as the board shall**
166 **require.**

167 **30. So far as practicable, the funds and property of the fund shall**
168 **be kept safely invested so as to earn a reasonable return. The board**
169 **may invest the funds of the fund as permitted by the laws of Missouri**
170 **relating to the investment of the capital, reserve, and surplus funds of**
171 **casualty insurance companies organized under the laws of Missouri.**

172 **31. If contributions to the fund do not produce sufficient funds**
173 **to pay any claims which may be due, the board shall assess and each**
174 **member, including any member who has withdrawn but was a member**
175 **in the year in which the assessment is required, shall pay such**
176 **additional amounts which are each member's proportionate share of**
177 **total claims allowed and due. The provisions of this subsection shall**
178 **apply retroactively to the creation of the Missouri mesothelioma risk**
179 **management fund.**

180 **32. The board, in order to carry out the purposes for which the**
181 **fund is established, may select and employ, or contract with, persons**
182 **experienced in insurance underwriting, accounting, the servicing of**
183 **claims, and rate making, who shall serve at the board's pleasure, as**
184 **technical advisors in establishing the annual contribution, or may call**
185 **upon the director of the department of insurance, financial institutions**
186 **and professional registration for such services.**

187 **33. Nothing in this section, shall be construed to broaden or**
188 **restrict the liability of the member employers participating in the fund**
189 **beyond the provisions of this sections, nor to abolish or waive any**
190 **defense at law which might otherwise be available to any employer**

191 **member.**

192 **34. If, at the end of any fiscal year, the fund has a balance**
193 **exceeding projected needs, and adequate reserves, the board may in its**
194 **discretion refund on a pro rata basis to all participating employer**
195 **members an amount based on the contributions of the public entity for**
196 **the immediately preceding year.**

287.280. 1. Every employer subject to the provisions of this chapter shall,
2 on either an individual or group basis, insure [his] **their** entire liability
3 [thereunder] **under the workers' compensation law; and may insure in**
4 **whole or in part their employer liability, under a policy of insurance**
5 **or a self-insurance plan**, except as hereafter provided, with some insurance
6 carrier authorized to insure such liability in this state, except that an employer
7 or group of employers may themselves carry the whole or any part of the liability
8 without insurance upon satisfying the division of their ability [so to do] **to do so.**
9 If an employer or group of employers have qualified to self-insure their liability
10 under this chapter, the division of workers' compensation may, if it finds after a
11 hearing that the employer or group of employers are willfully and intentionally
12 violating the provisions of this chapter with intent to defraud their employees of
13 their right to compensation, suspend or revoke the right of the employer or group
14 of employers to self-insure their liability. If the employer or group of employers
15 fail to comply with this section, an injured employee or his dependents may elect
16 after the injury either to bring an action against such employer or group of
17 employers to recover damages for personal injury or death and it shall not be a
18 defense that the injury or death was caused by the negligence of a fellow servant,
19 or that the employee had assumed the risk of the injury or death, or that the
20 injury or death was caused to any degree by the negligence of the employee; or
21 to recover under this chapter with the compensation payments commuted and
22 immediately payable; or, if the employee elects to do so, he or she may file a
23 request with the division for payment to be made for medical expenses out of the
24 second injury fund as provided in subsection 5 of section 287.220. If the employer
25 or group of employers are carrying their own insurance, on the application of any
26 person entitled to compensation and on proof of default in the payment of any
27 installment, the division shall require the employer or group of employers to
28 furnish security for the payment of the compensation, and if not given, all other
29 compensation shall be commuted and become immediately payable; provided, that
30 employers engaged in the mining business shall be required to insure only their

31 liability hereunder to the extent of the equivalent of the maximum liability under
32 this chapter for ten deaths in any one accident, but the employer or group of
33 employers may carry their own risk for any excess liability. When a group of
34 employers enter into an agreement to pool their liabilities under this chapter,
35 individual members will not 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. Any finding or determination made by the division under this section
64 may be reviewed as provided in sections 287.470 and 287.480.

65 6. No rule or portion of a rule promulgated under the authority of this
66 section shall become effective unless it has been promulgated pursuant to the

67 provisions of section 536.024.

68 7. Any records submitted pursuant to this section, and pursuant to any
69 rule promulgated by the division pursuant to this section, shall be considered
70 confidential and not subject to chapter 610. Any party to a workers'
71 compensation case involving the party that submitted the records shall be able
72 to subpoena the records for use in a workers' compensation case, if the
73 information is otherwise relevant.

 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.

287.715. 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. Notwithstanding subsection 2 of this section to the contrary,**
67 **the director of the division of workers' compensation shall collect a**
68 **supplemental surcharge not to exceed three percent for calendar years**
69 **2014 to 2021 of the policyholder's or self-insured's workers'**
70 **compensation net deposits, net premiums, or net assessments for the**
71 **previous policy year, rounded up to the nearest one-half of a**
72 **percentage point. All policyholders and self-insurers shall be notified**
73 **by the division of the supplemental surcharge percentage to be imposed**
74 **for such period of time as part of the notice provided in subsection 2**
75 **of this section. The provisions of this subsection shall expire on**
76 **December 31, 2021.**

77 7. Funds collected under the provisions of this chapter shall be

78 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 are not paid when due, the taxpayer shall be required to pay, as part of such tax, interest thereon at the rate of one and one-half percent per month for each month or fraction thereof delinquent. In the event the state prevails in any dispute concerning an assessment of tax which has not been paid by the taxpayer, interest shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction thereof delinquent.

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

287.955. 1. Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan filed with the director by the advisory organization designated by the director and subject to his disapproval.

2. An insurer may develop subclassifications of the uniform classification system upon which a rate may be made, except that such subclassifications shall be filed with the director thirty days prior to their use. The director shall disapprove subclassifications if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan and classification system.

[2.] 3. The director shall designate an advisory organization to assist him in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the director.

[3.] 4. The designated advisory organization shall develop and file manual rules, subject to the approval of the director, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.

20 **5.** Every workers' compensation insurer shall adhere to the approved
21 manual rules and experience rating plan in writing and reporting its business. No
22 insurer shall agree with any other insurer or with the advisory organization to
23 adhere to manual rules which are not reasonably related to the recording and
24 reporting of data pursuant to the uniform classification system of the uniform
25 statistical plan.

26 **6.** A workers' compensation insurer may develop an individual
27 risk premium modification rating plan which prospectively modifies
28 premium based upon individual risk characteristics which are
29 predictive of future loss. Such rating plan shall be filed thirty days
30 prior to use and may be subject to disapproval by the director.

31 **(1)** The rating plan shall establish objective standards for
32 measuring variations in individual risks for hazards or expense or
33 both. The rating plan shall be actuarially justified and shall not result
34 in premiums which are excessive, inadequate, or unfairly
35 discriminatory. The rating plan shall not utilize factors which are
36 duplicative of factors otherwise utilized in the development of rates or
37 premiums, including the uniform classification system and the uniform
38 experience rating plan. The premium modification factors utilized
39 under the rating plan shall be applied on a statewide basis, with no
40 premium modifications based solely upon the geographic location of the
41 employer.

42 **(2)** Within thirty days of a request, the insurer shall clearly
43 disclose to the employer the individual risk characteristics which
44 result in premium modifications. However, this disclosure shall not in
45 any way require the release to the insured employer of any trade secret
46 or proprietary information or data used to derive the premium
47 modification and that meets the definitions of, and is protected by, the
48 provisions of chapter 417.

49 **(3)** Premium modifications under this subsection may be
50 determined by an underwriter assessing the individual risk
51 characteristics and applying premium credits and debits as specified
52 under a schedule rating plan. Alternatively, an insurer may utilize
53 software or a computer risk modeling system designed to identify and
54 assess individual risk characteristics and which systematically and
55 uniformly applies premium modifications to similarly-situated
56 employers.

57 **(a) Premium modifications resulting from a schedule rating plan,**
58 **with an underwriter determining individual risk characteristics, shall**
59 **be limited to plus or minus twenty-five percent. An additional ten**
60 **percent credit may be given for a reduction in the insurer's expenses.**

61 **(b) Premium modifications resulting from a risk modeling system**
62 **shall be limited to plus or minus fifty percent. Premium modifications**
63 **resulting from a risk modeling system shall be reported separately**
64 **under the uniform statistical plan from premium modifications**
65 **resulting from a schedule rating plan.**

66 **(c) Premium credits or reductions shall not be removed or**
67 **reduced unless there is a change in the insurer, the insurer amends or**
68 **withdraws the rating plan, or unless there is a corresponding change**
69 **in the insured employer's operations or risk characteristics underlying**
70 **the credit or reduction.**

Section B. Section A of this act shall become effective January 1, 2014.

Bill ✓

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