

SECOND REGULAR SESSION

# SENATE BILL NO. 807

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time February 16, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5698S.011

## AN ACT

To repeal sections 287.140, 287.141, 287.143, 287.149, 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof ten new sections relating to workers' compensation, with an emergency clause for certain sections, with existing penalty provisions.

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

Section A. Sections 287.140, 287.141, 287.143, 287.149, 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 287.140, 287.141, 287.143, 287.149, 287.160, 287.165, 287.210, 287.220, 287.690, and 287.715, to read as follows:

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

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

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

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

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

48 4. The division shall, by regulation, establish methods to resolve disputes  
49 concerning the reasonableness of medical charges, services, or aids.  
50 This regulation shall govern resolution of disputes between employers and  
51 medical providers over fees charged, whether or not paid, and shall be in lieu of

52 any other administrative procedure under this chapter. The employee shall not  
53 be a party to a dispute over medical charges, nor shall the employee's recovery  
54 in any way be jeopardized because of such dispute.

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

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

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

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

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

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

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

99           (1) The patient;

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

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

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

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

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

116           (2) The notice shall include:

117           (a) The name of the employer;

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

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

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

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

122           (3) When an injury is found to be noncompensable under this chapter, the  
123 hospital, physician or other health care provider shall be entitled to pursue the

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

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

138 (5) If an employer or insurer fails to make payment for authorized  
139 services provided to the employee by a hospital, physician or other health care  
140 provider pursuant to this chapter, the hospital, physician or other health care  
141 provider may proceed pursuant to subsection 4 of this section with a dispute  
142 against the employer or insurer for any fees or other charges for services  
143 provided.

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

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

287.141. 1. The purpose of this section is to restore the injured person as  
2 soon as possible and as nearly as possible to a condition of self-support and

3 maintenance as an able-bodied worker by physical rehabilitation. The provisions  
4 of this chapter relating to physical rehabilitation shall be under the control of and  
5 administered by the director of the division of workers' compensation. The  
6 division of workers' compensation shall make such rules and regulations as may  
7 be necessary to carry out the purposes of this section, subject to the approval of  
8 the labor and industrial relations commission of Missouri.

9         2. The division of workers' compensation shall continuously study the  
10 problems of physical rehabilitation and shall investigate all rehabilitation  
11 facilities, both private and public, and upon such investigation shall approve as  
12 qualified all such facilities, institutions and physicians as are capable of  
13 rendering competent physical rehabilitation service for seriously injured  
14 industrial workers. Rehabilitation facilities shall include medical, surgical,  
15 hospital and physical restoration services. No facility or institution shall be  
16 considered as qualified unless it is equipped to provide physical rehabilitation  
17 services for persons suffering either from some specialized type of disability or  
18 general type of disability within the field of industrial injury, and unless such  
19 facility or institution is operated under the supervision of a physician qualified  
20 to render physical rehabilitation service and is staffed with trained and qualified  
21 personnel and has received a certificate of qualification from the division of  
22 workers' compensation. No physician shall be considered as qualified unless he  
23 has had the experience prescribed by the division.

24         3. In any case of serious injury involving disability following the period  
25 of rendition of medical aid as provided by subsection 1 of section 287.140, where  
26 physical rehabilitation is necessary if the employer or insurer shall offer such  
27 physical rehabilitation to the injured employee and such physical rehabilitation  
28 is accepted by the employee, then in such case the director of the division of  
29 workers' compensation shall be immediately notified thereof and thereupon enter  
30 his approval to such effect[, and the director of the division of workers'  
31 compensation shall requisition the payment of forty dollars per week benefit from  
32 the second injury fund in the state treasury to be paid to the employee while he  
33 is actually being rehabilitated, and shall immediately notify the state treasurer  
34 thereof by furnishing him with a copy of his order]. But in no case shall the  
35 period of physical rehabilitation extend beyond twenty weeks except in unusual  
36 cases and then only by a special order of the division of workers' compensation  
37 for such additional period as the division may authorize.

38         4. In all cases where physical rehabilitation is offered and accepted or

39 ordered by the division, the employer or insurer shall have the right to select any  
40 physician, facility, or institution that has been found qualified by the division of  
41 workers' compensation as above set forth.

42         5. If the parties disagree as to such physical rehabilitation treatment,  
43 where such treatment appears necessary, then either the employee, the employer,  
44 or insurer may file a request with the division of workers' compensation for an  
45 order for physical rehabilitation and the director of the division shall hear the  
46 parties within ten days after the filing of the request. The director of the division  
47 shall forthwith notify the parties of the time and place of the hearing, and the  
48 hearing shall be held at a place to be designated at the discretion of the  
49 division. The director of the division may conduct such hearing or he may direct  
50 one of the administrative law judges to conduct same. Such hearing shall be  
51 informal in all respects. The director of the division shall, after considering all  
52 evidence at such hearing, within ten days make his order in the matter, either  
53 denying such request or ordering the employer or insurer within a reasonable  
54 time, to furnish physical rehabilitation, and ordering the employee to accept the  
55 same, at the expense of the employer or insurer. [When the order requires  
56 physical rehabilitation, it shall also include an order to requisition the payment  
57 of forty dollars per week out of the second injury fund in the state treasury to the  
58 injured employee during such time as such employee is actually receiving physical  
59 rehabilitation.]

60         6. In every case where physical rehabilitation shall be ordered, the  
61 director of the division may, in his discretion, order the employer or insurer to  
62 furnish transportation to the injured employee to such rehabilitation facility or  
63 institution.

64         7. As used in this section, the term "physical rehabilitation" shall be  
65 deemed to include medical, surgical and hospital treatment in the same respect  
66 as required to be furnished under subsection 1 of section 287.140.

67         8. An appeal from any order of the division of workers' compensation  
68 hereby created to the appellate court may be taken and governed in all respects  
69 in the same manner as appeals in workers' compensation cases generally under  
70 section 287.495.

287.143. As a guide to the interpretation and application of sections  
2 287.144 to 287.149, sections 287.144 to 287.149 shall not be construed to require  
3 the employer to provide vocational rehabilitation to a severely injured employee.  
4 An employee shall submit to appropriate vocational testing and a vocational

5 rehabilitation assessment scheduled by an employer [or], its insurer, **or the**  
6 **attorney general on behalf of the second injury fund.**

287.149. 1. Temporary total disability or temporary partial disability  
2 benefits shall be paid throughout the rehabilitative process.

3 2. The permanency of the employee's disability under sections 287.170 to  
4 287.200 shall not be established, determined or adjudicated while the employee  
5 is participating in rehabilitation services.

6 3. Refusal of the employee to accept rehabilitation services or submit to  
7 a vocational rehabilitation assessment as deemed necessary by the employer **or**  
8 **the attorney general on behalf of the second injury fund** shall result in  
9 a fifty percent reduction in all disability payments to an employee, including  
10 temporary partial disability benefits paid pursuant to section 287.180, for each  
11 week of the period of refusal.

287.160. 1. Except as provided in section 287.140, no compensation shall  
2 be payable for the first three days or less of disability during which the employer  
3 is open for the purpose of operating its business or enterprise unless the  
4 disability shall last longer than fourteen days. If the disability lasts longer than  
5 fourteen days, payment for the first three days shall be made retroactively to the  
6 claimant.

7 2. Compensation shall be payable as the wages were paid prior to the  
8 injury, but in any event at least once every two weeks. If an injured employee  
9 claims benefits pursuant to this section, an employer may, if the employee agrees  
10 in writing, pay directly to the employee any benefits due pursuant to section  
11 287.170. The employer shall continue such payments until the insurer starts  
12 making the payments or the claim is contested by any party. Where the claim is  
13 found to be compensable the employer's workers' compensation insurer shall  
14 indemnify the employer for any payments made pursuant to this subsection. If  
15 the employee's claim is found to be fraudulent or noncompensable, after a  
16 hearing, the employee shall reimburse the employer, or the insurer if the insurer  
17 has indemnified the employer, for any benefits received either by a:

18 (1) Lump sum payment;

19 (2) Refund of the compensation equivalent of any accumulated sick or  
20 disability leave;

21 (3) Payroll deduction; or

22 (4) Secured installment plan. If the employee is no longer employed by  
23 such employer, the employer may garnish the employee's wages or execute upon



24 any property, except real estate, of the employee. Nothing in this subsection shall  
25 be construed to require any employer to make payments directly to the employee.

26 3. Where weekly benefit payments that are not being contested by the  
27 employer or his insurer are due, and if such weekly benefit payments are made  
28 more than thirty days after becoming due, the weekly benefit payments that are  
29 late shall be increased by [ten percent simple interest per annum] **the interest**  
30 **rate established in section 287.165.** Provided, however, that if such claim for  
31 weekly compensation is contested by the employee, and the employer or his  
32 insurer have not paid the disputed weekly benefit payments or lump sum within  
33 thirty days of when the administrative law judge's order becomes final, or from  
34 the date of a decision by the labor and industrial relations commission, or from  
35 the date of the last judicial review, whichever is later, interest on such disputed  
36 weekly benefit payments or lump sum so ordered, shall be increased by ten  
37 percent simple interest per annum beginning thirty days from the date of such  
38 order. Provided, however, that if such claims for weekly compensation are  
39 contested solely by the employer or insurer, no interest shall be payable until  
40 after thirty days after the award of the administrative law judge. The state of  
41 Missouri or any of its political subdivisions, as an employer, is liable for any such  
42 interest assessed against it for failure to promptly pay on any award issued  
43 against it under this chapter.

44 4. Compensation shall be payable in accordance with the rules given in  
45 sections 287.170, 287.180, 287.190, 287.200, 287.240, and 287.250.

46 5. The employer shall not be entitled to credit for wages or such pay  
47 benefits paid to the employee or his dependents on account of the injury or death  
48 except as provided in section 287.270.

**287.165. Unless otherwise provided for under this chapter,  
2 interest for the purpose of this chapter shall be set at the adjusted rate  
3 of interest established by the director of revenue pursuant to section  
4 32.065.**

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**, the time and place of which shall be fixed with due  
6 regard to the convenience of the employee and his physical condition and ability  
7 to attend. The employee may have his own physician present, and if the

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

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

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

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

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

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

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

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

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

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

93 9. The division or the commission may in its discretion in extraordinary  
94 cases order a postmortem examination and for that purpose may also order a body  
95 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 claims against the second injury fund for injuries  
16 occurring prior to the effective date of this section shall be  
17 compensated as provided in this subsection.** All cases of permanent  
18 disability where there has been previous disability shall be compensated as  
19 herein provided. Compensation shall be computed on the basis of the average  
20 earnings at the time of the last injury. If any employee who has a preexisting

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

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

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

70 **3. All claims against the second injury fund for injuries**  
71 **occurring after the effective date of this section shall be compensated**  
72 **as provided in this subsection.**

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

78 **(a) An employee has a medically documented preexisting**  
79 **permanent partial disability as a direct result of active military duty**  
80 **in any branch of the United States armed forces or as a result of a**  
81 **preexisting permanent partial disability from a compensable injury as**  
82 **defined in section 287.020;**

83 **(b) Such preexisting disability equals a minimum of fifty weeks**  
84 **of permanent partial disability compensation according to the medical**  
85 **standards that are used in determining such compensation; and**

86 **(c) Such employee thereafter sustains a subsequent compensable**  
87 **work-related injury that, when combined with the preexisting**  
88 **disability, as set forth in paragraphs (a) and (b) of this subdivision,**  
89 **results in a permanent total disability as defined under this chapter.**

90 **(2) When an employee is entitled to compensation as provided in**  
91 **this subsection, the employer at the time of the last work-related injury**  
92 **shall only be liable for the disability resulting from the subsequent**

93 **work-related injury considered alone and of itself.**

94 **(3) Compensation for benefits payable under this subsection shall**  
95 **be based on the employee's compensation rate calculated under section**  
96 **287.250.**

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

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

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

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

114 **(2) Notwithstanding subdivision (1) of this subsection to the**  
115 **contrary, the state treasurer, with the advice and consent of the**  
116 **attorney general and with the express authorization of the majority of**  
117 **the second injury fund commission, may enter into compromise**  
118 **settlements as contemplated by section 287.390 in any amount.**

119 **(3) The state treasurer, with the advice and consent of the**  
120 **attorney general and with the express authorization of a majority of**  
121 **the second injury fund commission, may enter into compromise**  
122 **settlements with dependents of claimants, whether finally adjudicated**  
123 **or not, arising from the Missouri supreme court's decision in Schoemehl**  
124 **v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).**

125 **(4) For all claims filed against the second injury fund on or after July 1,**  
126 **1994, the attorney general shall use assistant attorneys general except in**  
127 **circumstances where an actual or potential conflict of interest exists, to provide**  
128 **legal services as may be required in all claims made for recovery against the**

129 fund. Any legal expenses incurred by the attorney general's office in the handling  
130 of such claims, including, but not limited to, medical examination fees **incurred**  
131 **under sections 287.210 and the expenses provided for under section**  
132 **287.140**, expert witness fees, court reporter expenses, travel costs, and related  
133 legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of  
134 such legal expenses shall be contingent upon annual appropriations made by the  
135 general assembly, from the fund, to the attorney general's office for this specific  
136 purpose.

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

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

144 [5.] 7. If an employer fails to insure or self-insure as required in section  
145 287.280, funds from the second injury fund may be withdrawn to cover the fair,  
146 reasonable, and necessary expenses **incurred relating to claims for injuries**  
147 **occurring prior to the effective date of this section**, to cure and relieve the  
148 effects of the injury or disability of an injured employee in the employ of an  
149 uninsured employer **consistent with subsection 3 of section 287.140**, or in  
150 the case of death of an employee in the employ of an uninsured employer, funds  
151 from the second injury fund may be withdrawn to cover fair, reasonable, and  
152 necessary expenses **incurred relating to a death occurring prior to the**  
153 **effective date of this section**, in the manner required in sections 287.240 and  
154 287.241. In defense of claims arising under this subsection, the treasurer of the  
155 state of Missouri, as custodian of the second injury fund, shall have the same  
156 defenses to such claims as would the uninsured employer. Any funds received by  
157 the employee or the employee's dependents, through civil or other action, must  
158 go towards reimbursement of the second injury fund, for all payments made to the  
159 employee, the employee's dependents, or paid on the employee's behalf, from the  
160 second injury fund pursuant to this subsection. The office of the attorney general  
161 of the state of Missouri shall bring suit in the circuit court of the county in which  
162 the accident occurred against any employer not covered by this chapter as  
163 required in section 287.280.

164 [6.] 8. Every [three years] year the second injury fund shall have an



165 actuarial study made to determine the solvency of the fund **taking into**  
166 **consideration any existing balance carried forward from a previous**  
167 **year**, appropriate funding level of the fund, and forecasted expenditures from the  
168 fund. The first actuarial study shall be completed prior to July 1, [1988]  
169 **2013**. The expenses of such actuarial studies shall be paid out of the fund for the  
170 support of the division of workers' compensation.

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

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

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

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

198 **13. Notwithstanding the requirements of section 287.470, the life**  
199 **payments to an injured employee made from the fund shall be**  
200 **suspended when the employee is able to obtain suitable gainful**

201 **employment or be self-employed in view of the nature and severity of**  
202 **the injury. The division shall promulgate rules setting forth a**  
203 **reasonable standard means test to determine if such employment**  
204 **warrants the suspension of benefits.**

205 **14. Notwithstanding the requirements of section 287.470, the**  
206 **director may suspend, in whole or in part, the life payments to an**  
207 **injured employee made from the fund when the employee becomes**  
208 **eligible to receive Social Security benefits. In no case shall the sum of**  
209 **the amount of monthly payments from the fund and the monthly Social**  
210 **Security benefits attributable to the employee's injury, be less than the**  
211 **monthly life payments from the fund the employee has been receiving.**

212 **15. All awards issued under this chapter affecting the second**  
213 **injury fund shall be subject to the provisions of this chapter governing**  
214 **review and appeal.**

215 **16. The division shall pay any liabilities of the fund in the**  
216 **following priority:**

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

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

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

223 **(4) Medical expenses incurred prior to July 1, 2011, under**  
224 **subsection 7 of this section; and**

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

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

287.690. [1.] Prior to December 31, 1993, for the purpose of providing for  
2 the expense of administering this chapter [and for the purpose set out in  
3 subsection 2 of this section], every person, partnership, association, corporation,  
4 whether organized under the laws of this or any other state or country, the state  
5 of Missouri, including any of its departments, divisions, agencies, commissions,  
6 and boards or any political subdivisions of the state who self-insure or hold  
7 themselves out to be any part self-insured, company, mutual company, the parties  
8 to any interindemnity contract, or other plan or scheme, and every other  
9 insurance carrier, insuring employers in this state against liability for personal

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

45 [2. After January 1, 1994, the director of the division shall make one or

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

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

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

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

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

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

59         5. If a policyholder or self-insured fails to make payment of the surcharge  
60 or an insurer fails to make timely transfer to the division of surcharges actually  
61 collected from policyholders, as required by this section, a penalty of one-half of  
62 one percent of the surcharge unpaid, or untransferred, shall be assessed against  
63 the liable policyholder, self-insured or insurer. Penalties assessed under this

64 subsection shall be collected in a civil action by a summary proceeding brought  
65 by the director of the division of workers' compensation.

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

83           **7. In order to maintain the fiscal solvency of the second injury**  
84 **fund, should the anticipated collections authorized in subsections 2 and**  
85 **6 of this section fail to be sufficient to meet its current and anticipated**  
86 **legal obligations, provide funds to settle cases, and provide funds for**  
87 **the administration of the fund for calendar years 2014, 2015, 2016, 2017,**  
88 **2018, and 2019, the second injury fund commission shall determine on**  
89 **or before October thirty-first the amount of revenue so required for the**  
90 **following calendar year. Notwithstanding subsection 2 of this section**  
91 **to the contrary, such necessary funds as determined by the second**  
92 **injury fund commission shall be collected with a supplemental**  
93 **surcharge, not to exceed one and one-half percent, calculated in like**  
94 **manner as authorized in subsection 2 of this section. All policyholders**  
95 **and self-insurers shall be notified by the division of workers'**  
96 **compensation of the supplemental surcharge percent to be imposed for**  
97 **such period of time as part of the notice provided in subsection 2 of**  
98 **this section. The provisions of this subsection shall expire on**  
99 **December 31, 2019.**

100           **8. Once the number of pending cases is reduced to the point**

101 where the number of staff with the attorney general's office defending  
102 the second injury fund can be reduced from July 2012 levels, the  
103 attorney general shall begin reducing such staff in proportion to the  
104 number of pending cases which remain.

105 9. Funds collected under the provisions of this chapter shall be  
106 the sole funding source of the second injury fund.

107 10. The "Second Injury Fund Commission" is hereby  
108 established. The second injury fund commission shall be composed of  
109 four members including the governor, the attorney general, the  
110 president pro tem of the senate, and the speaker of the house of  
111 representatives. Commission members may not appoint a designee to  
112 serve in their absence. The second injury fund commission shall  
113 convene as necessary as determined by the governor. The second  
114 injury fund commission shall also reconvene within thirty days of any  
115 official written request submitted to the governor by any member of the  
116 second injury fund commission. The surcharge amount as authorized  
117 under subsection 7 of this section shall be reviewed and established  
118 annually by the second injury fund commission by a three-fourths vote.  
119 The office of attorney general and the division of workers'  
120 compensation shall provide technical assistance and support to the  
121 members of the second injury fund commission, for purposes of this  
122 section. The members of the second injury fund commission shall  
123 receive no compensation in addition to their salary as governor,  
124 attorney general, or members of the general assembly, but may receive  
125 their necessary expenses while attending the meetings of the  
126 commission, to be paid out of the second injury fund.

Section B. Because it is necessary to ensure the solvency of the second  
2 injury fund, the enactment of section 287.165 and the repeal and reenactment of  
3 section 287.220 of this act is deemed necessary for the immediate preservation of  
4 the public health, welfare, peace and safety, and is hereby declared to be an  
5 emergency act within the meaning of the constitution, and the enactment of  
6 section 287.165 and the repeal and reenactment of section 287.220 of this act  
7 shall be in full force and effect upon its passage and approval.

✓