

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 901**  
**94TH GENERAL ASSEMBLY**

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Reported from the Special Committee on Workforce Development and Workplace Safety April 23, 2008 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 901 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3608L.06C

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**AN ACT**

To repeal sections 23.020, 287.020, 287.200, 287.220, 287.230, 287.260, 287.280, 287.690, and 287.715, RSMo, and to enact in lieu thereof twelve new sections relating to workers' compensation law.

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

Section A. Sections 23.020, 287.020, 287.200, 287.220, 287.230, 287.260, 287.280, 287.690, and 287.715, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 23.020, 287.020, 287.200, 287.219, 287.220, 287.225, 287.230, 287.260, 287.280, 287.315, 287.690, and 287.715, to read as follows:

23.020. The committee shall perform the following services for the members of the general assembly:

- (1) Provide a research and reference service on legislative problems;
- (2) Upon written request, make investigation into legislative and governmental institutions of this state or other states to aid the general assembly;
- (3) Upon written request, assist and cooperate with any interim legislative committee or commission created by the general assembly;
- (4) Upon written request, draft or aid in drafting bills, resolutions, memorials and amendments and render any other service in connection therewith for any member of the general

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 assembly[.] ;

11 **(5) Beginning September 1, 2008, provide a committee meeting once each quarter**  
12 **for the following state entities to present a quarterly update, including a quarterly financial**  
13 **and status report on the Missouri second injury fund:**

14 **(a) The state treasurer as the custodian of the second injury fund;**

15 **(b) The attorney general on defense of the fund;**

16 **(c) The state auditor on any audits that the office has completed that will provide**  
17 **information on the financial status of the second injury fund;**

18 **(d) The office of administration on any budget issues that will impact the second**  
19 **injury fund;**

20 **(e) The department of insurance, financial institutions and professional registration**  
21 **on the workers' compensation insurance premium base and its impact on the second injury**  
22 **fund; and**

23 **(f) The department of labor and industrial relations and its division of workers'**  
24 **compensation on the financial status of the workers' compensation fund and the**  
25 **administrative and adjudication issues that impact the second injury fund.**

26

27 **A list of questions required in each report by each entity for the committee shall be**  
28 **submitted to the participating entities ten to thirty days prior to the date of the quarterly**  
29 **meeting. Public testimony shall be supported by written documentation. The committee**  
30 **shall compile the written testimony for distribution to the committee members, all members**  
31 **of the general assembly, and to such entities and the general public as the committee shall**  
32 **deem necessary. Beginning October 15, 2008, and annually each year following the**  
33 **committee's September quarterly meeting, the chair and vice chair of the committee shall**  
34 **meet with the director of the division of workers' compensation to recommend a tax rate**  
35 **for the workers' compensation fund and a second injury fund surcharge for the following**  
36 **calendar year based on information presented to the committee by all entities listed above**  
37 **at the September quarterly meeting. Per section 287.690, RSMo, the workers'**  
38 **compensation tax rate shall be recommended to be no less than one percent and no greater**  
39 **than two percent in any calendar year. Per section 287.715, RSMo, the second injury fund**  
40 **surcharge shall be recommended to be no greater than three percent in any calendar year.**

287.020. 1. The word "employee" as used in this chapter shall be construed to mean  
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,  
3 express or implied, oral or written, or under any appointment or election, including executive  
4 officers of corporations. **Except as otherwise provided in this chapter,** any reference to any  
5 employee who has been injured shall, when the employee is dead, also include his dependents,

6 and other persons to whom compensation may be payable. The word "employee" shall also  
7 include all minors who work for an employer, whether or not such minors are employed in  
8 violation of law, and all such minors are hereby made of full age for all purposes under, in  
9 connection with, or arising out of this chapter. The word "employee" shall not include an  
10 individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and operator  
11 of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier  
12 operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or  
13 operating under a certificate issued by the Missouri department of transportation or by the United  
14 States Department of Transportation, or any of its subagencies.

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

19 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen  
20 out of and in the course of employment. An injury by accident is compensable only if the  
21 accident was the prevailing factor in causing both the resulting medical condition and disability.  
22 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing  
23 both the resulting medical condition and disability.

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

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

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

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

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

35 (5) The terms "injury" and "personal injuries" shall mean violence to the physical  
36 structure of the body and to the personal property which is used to make up the physical structure  
37 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other  
38 prostheses which are placed in or on the body to replace the physical structure and such disease  
39 or infection as naturally results therefrom. These terms shall in no case except as specifically  
40 provided in this chapter be construed to include occupational disease in any form, nor shall they  
41 be construed to include any contagious or infectious disease contracted during the course of the

42 employment, nor shall they include death due to natural causes occurring while the worker is at  
43 work.

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

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

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

58 7. As used in this chapter and all acts amendatory thereof, the term "commission" shall  
59 hereafter be construed as meaning and referring exclusively to the labor and industrial relations  
60 commission of Missouri, and the term "director" shall hereafter be construed as meaning the  
61 director of the department of insurance of the state of Missouri or such agency of government  
62 as shall exercise the powers and duties now conferred and imposed upon the department of  
63 insurance of the state of Missouri.

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

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

69 10. In applying the provisions of this chapter, it is the intent of the legislature to reject  
70 and abrogate earlier case law interpretations on the meaning of or definition of "accident",  
71 "occupational disease", "arising out of", and "in the course of the employment" to include, but  
72 not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d  
73 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and  
74 Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,  
75 or following those cases.

287.200. 1. **Beginning August 28, 2008, no claim for permanent partial disability**  
2 **shall be made against the second injury fund established under section 287.220.**

3           **2.** Compensation for permanent total disability shall be paid during the continuance of  
4 such disability for the lifetime of the employee at the weekly rate of compensation in effect under  
5 [this] subsection **2 of this section** on the date of the injury for which compensation is being  
6 made[. The amount of such compensation shall be computed as follow] , **with the following**  
7 **exceptions:**

8           **(1) Permanent total disability benefits that have accrued, paid or unpaid, through**  
9 **the date of the injured employee's death shall be the only permanent total disability**  
10 **benefits that are to be paid in accordance with section 287.230. Permanent total disability**  
11 **of an injured employee terminates on the date of the injured employee's death in**  
12 **accordance with section 287.230 and shall not survive to the injured employee's**  
13 **dependents, estate, or other persons to whom compensation might otherwise be payable.**  
14 **As used in this section the word "employee" shall not include the injured worker's**  
15 **dependents, estate, or other persons to whom compensation may be payable as provided**  
16 **in subsection 1 of section 287.020;**

17           **(2) All claims for permanent total disability shall be determined in accordance with**  
18 **the facts. When an injured employee receives an award for permanent total disability and**  
19 **the employee at any time thereafter is able to compete for employment in the open labor**  
20 **market or returns to work, the life payment as described in subsection 1 of this section**  
21 **shall terminate. The commission shall retain jurisdiction in the case during the lifetime of**  
22 **any injured employee who has received an award of permanent total disability.**

23  
24 **The reference to the employee in this section refers only to the injured worker and shall**  
25 **not include his or her dependents, estate, personal representative, or heirs, or any person**  
26 **to whom compensation might otherwise be payable. The right to compensation for**  
27 **permanent total disability of an injured employee shall not survive to any person and**  
28 **terminates on the date of the injured employee's death in accordance with section 287.230.**  
29 **Any provisions in subsection 1 of section 287.020 which are contrary to the provisions of**  
30 **this section shall not apply.**

31           **3. The amount of such compensation shall be computed as follows:**

32           **(1) For all injuries occurring on or after September 28, 1983, but before September 28,**  
33 **1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of**  
34 **the injured employee's average weekly earnings during the year immediately preceding the**  
35 **injury, as of the date of the injury; provided that the weekly compensation paid under this**  
36 **subdivision shall not exceed an amount equal to seventy percent of the state average weekly**  
37 **wage, as such wage is determined by the division of employment security, as of the July first**  
38 **immediately preceding the date of injury;**

39 (2) For all injuries occurring on or after September 28, 1986, but before August 28,  
40 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
41 the injured employee's average weekly earnings during the year immediately preceding the  
42 injury, as of the date of the injury; provided that the weekly compensation paid under this  
43 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly  
44 wage, as such wage is determined by the division of employment security, as of the July first  
45 immediately preceding the date of injury;

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

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

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

58 [2. All claims for permanent total disability shall be determined in accordance with the  
59 facts. When an injured employee receives an award for permanent total disability but by the use  
60 of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular  
61 work or its equivalent, the life payment mentioned in subsection 1 of this section shall be  
62 suspended during the time in which the employee is restored to his regular work or its equivalent.  
63 The employer and the division shall keep the file open in the case during the lifetime of any  
64 injured employee who has received an award of permanent total disability. In any case where  
65 the life payment is suspended under this subsection, the commission may at reasonable times  
66 review the case and either the employee or the employer may request an informal conference  
67 with the commission relative to the resumption of the employee's weekly life payment in the  
68 case.]

**287.219. The "second injury fund" shall be referred to as the "veterans and  
2 permanent total disability fund". The revisor of statutes shall make the appropriate  
3 changes to all such references in the revised statutes.**

**287.220. 1. Prior to August 28, 2008, all cases of permanent disability where [there has  
2 been previous disability shall be compensated as herein provided] a claim has been filed  
3 against the second injury fund under section 287.430 and a determination of disability**

4 **certified by a physician based upon objective medical findings has been made shall be**  
5 **compensated as provided in subsections 1 to 9 of this section.** Compensation shall be  
6 computed on the basis of the average earnings at the time of the last injury. If any employee who  
7 has a preexisting permanent partial disability whether from compensable injury or otherwise, of  
8 such seriousness as to constitute a hindrance or obstacle to employment or to obtaining  
9 reemployment if the employee becomes unemployed, and the preexisting permanent partial  
10 disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if  
11 a major extremity injury only, equals a minimum of fifteen percent permanent partial disability,  
12 according to the medical standards that are used in determining such compensation, receives a  
13 subsequent compensable injury resulting in additional permanent partial disability so that the  
14 degree or percentage of disability, in an amount equal to a minimum of fifty weeks  
15 compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum  
16 of fifteen percent permanent partial disability, caused by the combined disabilities is substantially  
17 greater than that which would have resulted from the last injury, considered alone and of itself,  
18 and if the employee is entitled to receive compensation on the basis of the combined disabilities,  
19 the employer at the time of the last injury shall be liable only for the degree or percentage of  
20 disability which would have resulted from the last injury had there been no preexisting disability.  
21 After the compensation liability of the employer for the last injury, considered alone, has been  
22 determined by an administrative law judge or the commission, the degree or percentage of  
23 employee's disability that is attributable to all injuries or conditions existing at the time the last  
24 injury was sustained shall then be determined by that administrative law judge or by the  
25 commission and the degree or percentage of disability which existed prior to the last injury plus  
26 the disability resulting from the last injury, if any, considered alone, shall be deducted from the  
27 combined disability, and compensation for the balance, if any, shall be paid out of a special fund  
28 known as the second injury fund, hereinafter provided for. If the previous disability or  
29 disabilities, whether from compensable injury or otherwise, and the last injury together result in  
30 total and permanent disability, the minimum standards under this subsection for a body as a  
31 whole injury or a major extremity injury shall not apply and the employer at the time of the last  
32 injury shall be liable only for the disability resulting from the last injury considered alone and  
33 of itself; except that if the compensation for which the employer at the time of the last injury is  
34 liable is less than the compensation provided in this chapter for permanent total disability, then  
35 in addition to the compensation for which the employer is liable and after the completion of  
36 payment of the compensation by the employer, the employee shall be paid the remainder of the  
37 compensation that would be due for permanent total disability under section 287.200 out of a  
38 special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as  
39 in this section provided and for special weekly benefits in rehabilitation cases as provided in

40 section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710.  
41 The state treasurer shall be the custodian of the second injury fund which shall be deposited the  
42 same as are state funds and any interest accruing thereon shall be added thereto. The fund shall  
43 be subject to audit the same as state funds and accounts and shall be protected by the general  
44 bond given by the state treasurer. Upon the requisition of the director of the division of workers'  
45 compensation, warrants on the state treasurer for the payment of all amounts payable for  
46 compensation and benefits out of the second injury fund shall be issued.

47 2. In all cases in which a recovery against the second injury fund is sought for permanent  
48 partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall  
49 be named as a party, and shall be entitled to defend against the claim. The state treasurer, with  
50 the advice and consent of the [attorney general of Missouri] **director of the department of**  
51 **labor and industrial relations or the designee of the director**, may enter into compromise  
52 settlements as contemplated by section 287.390, or agreed statements of fact that would affect  
53 the second injury fund. **However, beginning August 28, 2008, there shall be no compromise**  
54 **settlements contemplated by section 287.390 paid from the second injury fund in an**  
55 **amount greater than twenty thousand dollars.** All awards for permanent partial disability,  
56 permanent total disability, or death affecting the second injury fund shall be subject to the  
57 provisions of this chapter governing review and appeal. For all **pending and new** claims filed  
58 against the second injury fund on or after [July 1, 1994] **August 28, 2008**, the [attorney general]  
59 **director of the department of labor and industrial relations or the designee of the director**  
60 **of the department of labor and industrial relations** shall use [assistant attorneys general] **staff**  
61 **attorneys employed by the department of labor and industrial relations** except in  
62 circumstances where an actual or potential conflict of interest exists, to provide legal services  
63 as may be required in all claims made for recovery against the fund, **including but not limited**  
64 **to, appearing on behalf of the state treasurer to defend against claims.** Any legal expenses  
65 incurred by the [attorney general's office] **department of labor and industrial relations** in the  
66 handling of such claims, including, but not limited to, medical examination fees, **vocational**  
67 **testing fees, vocational rehabilitation assessment fees**, expert witness fees, court reporter  
68 expenses, travel costs, and related legal expenses shall be paid by the fund. Effective [July 1,  
69 1993] **August 28, 2008**, the payment of such legal expenses shall be contingent upon annual  
70 appropriations made by the general assembly, from the fund, to the [attorney general's office]  
71 **department of labor and industrial relations** for this specific purpose.

72 3. If more than one injury in the same employment causes concurrent temporary  
73 disabilities, compensation shall be payable only for the longest and largest paying disability.



74           4. If more than one injury in the same employment causes concurrent and consecutive  
75 permanent partial disability, compensation payments for each subsequent disability shall not  
76 begin until the end of the compensation period of the prior disability.

77           5. If an employer fails to insure or self-insure as required in section 287.280, funds from  
78 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses  
79 to cure and relieve the effects of the injury or disability of an injured employee in the employ of  
80 an uninsured employer, or in the case of death of an employee in the employ of an uninsured  
81 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and  
82 necessary expenses in the manner required in sections 287.240 and 287.241. In defense of  
83 claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the  
84 second injury fund, shall have the same defenses to such claims as would the uninsured employer  
85 **and shall have the right to dispute the reasonableness of the medical charges or fees based**  
86 **upon an audit of the medical bills. The treasurer of the state of Missouri shall be permitted**  
87 **to present any evidence with respect to the audit findings on the medical charges.** Any  
88 funds received by the employee or the employee's dependents, through civil or other action, must  
89 go towards reimbursement of the second injury fund, for all payments made to the employee, the  
90 employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant  
91 to this subsection. The office of the attorney general of the state of Missouri shall bring suit in  
92 the circuit court of the county in which the accident occurred against any employer not covered  
93 by this chapter as required in section 287.280.

94           6. [Every three years] **Annually** the second injury fund shall have an actuarial study  
95 made to determine the solvency of the fund, appropriate funding level of the fund, and forecasted  
96 expenditures from the fund **and any other responsibilities of the fund resulting from any**  
97 **judicial decision.** The first actuarial study shall be completed prior to [July 1, 1988] **January**  
98 **1, 2009.** The expenses of such actuarial studies shall be paid out of the fund for the support of  
99 the division of workers' compensation.

100           7. The director of the division of workers' compensation shall maintain the financial data  
101 and records concerning the fund for the support of the division of workers' compensation and the  
102 second injury fund. The division shall also compile and report data on claims made pursuant to  
103 subsection 9 of this section. The attorney general shall provide all necessary information to the  
104 division for this purpose.

105           8. All claims for fees and expenses filed against the second injury fund and all records  
106 pertaining thereto shall be open to the public.

107           9. Any employee who at the time a compensable work-related injury is sustained is  
108 employed by more than one employer, the employer for whom the employee was working when  
109 the injury was sustained shall be responsible for wage loss benefits applicable only to the

earnings in that employer's employment and the injured employee shall be entitled to file a claim against the second injury fund for any additional wage loss benefits attributed to loss of earnings from the employment or employments where the injury did not occur, up to the maximum weekly benefit less those benefits paid by the employer in whose employment the employee sustained the injury. The employee shall be entitled to a total benefit based on the total average weekly wage of such employee computed according to subsection 8 of section 287.250. The employee shall not be entitled to a greater rate of compensation than allowed by law on the date of the injury. The employer for whom the employee was working where the injury was sustained shall be responsible for all medical costs incurred in regard to that injury.

**10. Notwithstanding any provision of law to the contrary, if a claimant does not settle a claim for compensation in a lump sum payment of twenty thousand dollars or less, the claimant shall be subject to the following:**

- (1) An independent medical evaluation;**
- (2) Appropriate vocational testing or a vocational assessment;**
- (3) An evidentiary hearing for findings of fact;**
- (4) Written findings by an administrative law judge after a hearing conducted with the claimant present.**

**11. (1) Beginning August 28, 2008, claims against the second injury fund shall only be compensated as provided for in subsections 10 to 14 of this section. Claims for disability against the second injury fund shall be compensable where an employee has a medically documented preexisting disability as a direct result of active military duty or as a result of a preexisting permanent partial disability from a compensable injury as defined in section 287.020. To be compensable from the second injury fund, there shall be a medically documented preexisting disability resulting from active military duty or a preexisting permanent partial disability from a compensable injury as defined in section 287.020, which equals a minimum of fifty weeks of compensation, or if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability according to the medical standards that are used in determining such compensation, and thereafter sustains a subsequent work-related injury that, when combined with the preexisting military disability or preexisting permanent partial disability from a compensable injury as defined in section 287.020, results in permanent total disability as defined in section 287.020, compensation for such permanent total disability shall be paid as provided herein.**

**(2) If the preexisting permanent partial disability from a compensable injury as defined in section 287.020 or a disability resulting from active military duty and the subsequent work-related injury that is found to be compensable as defined in section 287.020 together result in total and permanent disability, then the employer at the time of**

the subsequent work-related injury shall be liable only for the disability resulting from the subsequent work-related injury considered alone and of itself; except that if the compensation for which the employer at the time of the subsequent work-related injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for the permanent total disability under section 287.200 out of the second injury fund.

(3) Any person receiving permanent total disability benefits from the fund shall annually, from the date when the award is deemed final and conclusive or the date a settlement is approved by the division, submit to the division proof of eligibility to continue receiving permanent total disability benefits supported by the treating physician that includes a vocational rehabilitation assessment from a rehabilitation provider of the employee's current and projected functional capabilities and limitations and other relevant information that the division deems necessary.

(4) Maintenance of the second injury fund shall be provided by section 287.710. The state treasurer shall be the custodian of the fund which shall be deposited the same as are the state funds and any interest accruing thereon shall be added thereto. The funds shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer.

12. In all cases in which a recovery against the fund is sought for permanent total disability, the employee shall file a claim naming the treasurer of the state of Missouri as custodian of the fund as a party and the employee shall submit to appropriate vocational testing, a vocational rehabilitation assessment, and an independent medical examination scheduled by the fund:

(1) All awards for permanent total disability or medical or death benefits for an uninsured employer affecting the fund, which shall be subject to the provisions of this chapter governing review and appeal;

(2) Compensation for benefits payable under this section, which shall be based on the average weekly wage calculated under section 287.250 as of the date of the injury.

13. If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or of an injured employee in the employ of an uninsured employer, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses in the manner required in sections 287.240 and

182 **287.241. In defense of claims arising under this subsection, the treasurer of the state of**  
183 **Missouri, as custodian of the fund, shall have the same defenses to such claims as would**  
184 **the uninsured employer, including the right to dispute the reasonableness of the medical**  
185 **charges or fees based upon an audit of the medical bills. The treasurer of the state of**  
186 **Missouri shall be permitted to present any evidence with respect to the audit findings on**  
187 **the medical charges. Any moneys received by the employee or the employee's dependents**  
188 **through civil or other action shall go toward reimbursement of the second injury fund for**  
189 **all payments made to the employee, the employee's dependents, or paid on the employee's**  
190 **behalf from the fund under this subsection. The office of the attorney general of the state**  
191 **of Missouri shall bring suit in the circuit court of the county in which the accident occurred**  
192 **against the employer not covered by this chapter as required in section 287.280.**

193 **14. In addition to the factors set forth in section 287.200 for the suspension of life**  
194 **payments to an injured employee from the fund, and notwithstanding the requirements of**  
195 **section 287.470, the life payments to an injured employee made from the fund shall be**  
196 **suspended when the employee is able to obtain gainful employment or be self-employed in**  
197 **view of the nature and severity of the injury.**

198 **15. For any second and subsequent claims filed on behalf of a claimant against the**  
199 **second injury fund, a fee shall be paid by the claimant in the amount of one hundred**  
200 **dollars.**

201 **16. Upon the requisition of the director of the division of workers' compensation,**  
202 **warrants on the state treasurer for the payment of all amounts payable for compensation**  
203 **and benefits out of the second injury fund shall be issued, except that no claimant receiving**  
204 **a lump sum settlement or award shall be compensated from the fund in an amount greater**  
205 **than ten thousand dollars in any twelve-month period but shall be compensated in amounts**  
206 **necessary until the lump sum settlement is satisfied. Effective August 1, 2008, the**  
207 **provisions of this subsection shall terminate on January first of the year following the first**  
208 **actuarial study as required in subsection 6 of this section that indicates that the fund is**  
209 **solvent.**

**287.225. Notwithstanding any provision of law to the contrary, a claimant shall not**  
2 **receive compensation for injuries in which the aggregate total of disability exceeds one**  
3 **hundred percent.**

287.230. 1. The death of the injured employee shall not affect the liability of the  
2 employer to furnish compensation as in this chapter provided, so far as the liability has accrued  
3 and become payable at the time of the death, and any accrued and unpaid compensation due the  
4 employee shall be paid to his dependents without administration, or if there are no dependents,

5 to his personal representative or other persons entitled thereto, but the death shall be deemed to  
6 be the termination of the disability.

7 2. Where an employee is entitled to compensation under this chapter, **exclusive of**  
8 **compensation as provided for in section 287.200**, for an injury received and death ensues for  
9 any cause not resulting from the injury for which [he] **the employee** was entitled to  
10 compensation, [payments of the unpaid accrued compensation shall be paid, but] payments of  
11 the unpaid unaccrued [balance] **compensation under section 287.190 and no other**  
12 **compensation** for the injury shall [cease and all liability therefor shall terminate unless there are]  
13 **be paid to the** surviving dependents at the time of death.

14 3. **In applying the provisions of this chapter, it is the intent of the legislature to**  
15 **reject and abrogate the holding in Schoemehl v. Treasurer of the State of Missouri, 217**  
16 **S.W.3d 900 (Mo. banc 2007), and all cases citing, interpreting, applying, or following this**  
17 **case.**

287.260. 1. The compensation payable under this chapter, whether or not it has been  
2 awarded or is due, shall not be assignable, shall be exempt from attachment, garnishment, and  
3 execution, shall not be subject to setoff or counterclaim, or be in any way liable for any debt and  
4 in case of the insolvency of an employer or his insurer, or the levy of an attachment or an  
5 execution against an employer or insurer shall be entitled to the same preference and priority as  
6 claims for wages, without limit as to time or amount, except that if written notice is given to the  
7 division or the commission of the nature and extent thereof, the division or the commission may  
8 allow as lien on the compensation, reasonable attorney's fees for services in connection with the  
9 proceedings for compensation if the services are found to be necessary and may order the amount  
10 thereof paid to the attorney in a lump sum or in installments. All attorney's fees for services in  
11 connection with this chapter shall be subject to regulation by the division or the commission and  
12 shall be limited to such charges as are fair and reasonable and the division or the commission  
13 shall have jurisdiction to hear and determine all disputes concerning the same. **However,**  
14 **attorney fees shall not exceed fifteen percent of any award, lump sum settlement, or an**  
15 **annuity settlement against the second injury fund.**

16 2. Notwithstanding subsection 1 of this section, the compensation payable under this  
17 chapter other than compensation for medical expenses and therapy under section 287.141, shall  
18 be assignable for the purpose of satisfying child support obligations, shall be subject to  
19 attachment, garnishment and execution for the purpose of collecting and satisfying unpaid and  
20 delinquent child support obligations, and shall be subject to the lien provided for in section  
21 454.517, RSMo. Section 452.140, RSMo, shall apply to limit property exemptions available in  
22 an action to collect child support under this subsection.

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure his entire liability thereunder, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability so to do. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his dependents may elect after the injury either to bring an action against such employer or group of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of the employee; or to recover under this chapter with the compensation payments commuted and immediately payable; or, if the employee elects to do so, he or she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 5 of section 287.220. If the employer or group of employers are carrying their own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the employer or group of employers to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but the employer or group of employers may carry their own risk for any excess liability. When a group of employers enter into an agreement to pool their liabilities under this chapter, individual members will not be required to qualify as individual self-insurers.

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

3. For every entity qualified to group self-insure their liability pursuant to this chapter or chapter 537, RSMo, each entity shall not authorize total discounts for any individual member

36 exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on  
37 objective quantitative factors and applied uniformly to all trust members.

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

51 **5. Employers may provide to the division an irrevocable letter of credit from a bank**  
52 **as security to self-insure their liability under this chapter.**

53 6. Any finding or determination made by the division under this section may be reviewed  
54 as provided in sections 287.470 and 287.480.

55 [6.] 7. No rule or portion of a rule promulgated under the authority of this section shall  
56 become effective unless it has been promulgated pursuant to the provisions of section 536.024,  
57 RSMo.

58 [7.] 8. Any records submitted pursuant to this section, and pursuant to any rule  
59 promulgated by the division pursuant to this section, shall be considered confidential and not  
60 subject to chapter 610, RSMo. Any party to a workers' compensation case involving the party  
61 that submitted the records shall be able to subpoena the records for use in a workers'  
62 compensation case, if the information is otherwise relevant.

**287.315. The department of insurance, financial institutions and professional**  
2 **registration may audit companies insured in multiple states for the purpose of determining**  
3 **the amount of the insurance premium that is applicable to Missouri workers and by**  
4 **extension the surcharge required for the second injury fund.**

287.690. [1. Prior to December 31, 1993,] **Beginning January 1, 2009**, for the purpose  
2 of providing for the expense of administering this chapter [and for the purpose set out in  
3 subsection 2 of this section], every person, partnership, association, corporation, whether  
4 organized under the laws of this or any other state or country, the state of Missouri, including any  
5 of its departments, divisions, agencies, commissions, and boards or any political subdivisions

6 of the state who self-insure or hold themselves out to be any part self-insured, company, mutual  
7 company, the parties to any interindemnity contract, or other plan or scheme, and every other  
8 insurance carrier, insuring employers in this state against liability for personal injuries to their  
9 employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter,  
10 tax upon the net deposits, net premiums or net assessments received, whether in cash or notes  
11 in this state, or on account of business done in this state, for such insurance in this state at the  
12 **annual rate of no less than one percent and no greater than two percent** in lieu of all [other]  
13 **premium** taxes on such net deposits, net premiums or net assessments, which amount of taxes  
14 shall be assessed and collected as herein provided. Beginning October 31, [1993] **2008**, and  
15 every year thereafter, the director of the division of workers' compensation shall estimate the  
16 amount of revenue required to administer this chapter and the **division** director shall determine  
17 the rate of tax to be paid in the following calendar year pursuant to this section commencing with  
18 the calendar year beginning on January 1, [1994] **2009**. If the balance of the fund [estimated to  
19 be] on hand on [December thirty-first] **July first** of the year each tax rate determination is made  
20 **on October thirty-first** is less than one hundred ten percent of the previous year's expenses plus  
21 any additional revenue required due to new statutory requirements given to the division by the  
22 general assembly, then the **division** director shall impose a tax [not to exceed two percent] **of one**  
23 **percent**, in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up  
24 to the nearest one-half of a percentage point, which amount of taxes shall be assessed and  
25 collected as herein provided. **The workers' compensation fund tax shall not exceed two**  
26 **percent in any year.** The net premium equivalent for individual self-insured employers and any  
27 group of political subdivisions of this state qualified to self-insure their liability pursuant to this  
28 chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications  
29 calculated by the department of insurance, **financial institutions and professional registration**  
30 as taken from premium rates filed by the twenty insurance companies providing the greatest  
31 volume of workers' compensation insurance coverage in this state. For employers qualified to  
32 self-insure their liability pursuant to this chapter, the rates filed by such group of employers in  
33 accordance with subsection 2 of section 287.280 shall be the net premium equivalent. Every  
34 entity required to pay the tax imposed pursuant to this section and section 287.730 shall be  
35 notified by the division of workers' compensation within ten calendar days of the date of the  
36 determination of the rate of tax to be imposed for the following year. Net premiums, net deposits  
37 or net assessments are defined as gross premiums, gross deposits or gross assessments less  
38 canceled or returned premiums, premium deposits or assessments and less dividends or savings,  
39 actually paid or credited.

40 [2. After January 1, 1994, the director of the division shall make one or more loans to  
41 the Missouri employers mutual insurance company in an amount not to exceed an aggregate



42 amount of five million dollars from the fund maintained to administer this chapter for start-up  
43 funding and initial capitalization of the company. The board of the company shall make  
44 application to the director for the loans, stating the amount to be loaned to the company. The  
45 loans shall be for a term of five years and, at the time the application for such loans is approved  
46 by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as  
47 calculated by the state treasurer pursuant to section 30.758, RSMo.]

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

11 2. Beginning October 31, [2005] **2008**, and each year thereafter, the director of the  
12 division of workers' compensation shall estimate the amount of benefits payable from the second  
13 injury fund during the following calendar year and shall calculate the total amount of the annual  
14 surcharge to be imposed during the following calendar year upon all workers' compensation  
15 policyholders and authorized self-insurers. The amount of the annual surcharge percentage to  
16 be imposed upon each policyholder and self-insured for the following calendar year commencing  
17 with the calendar year beginning on January 1, [2006] **2009**, shall be set at and calculated against  
18 a percentage, not to exceed three percent, of the policyholder's or self-insured's workers'  
19 compensation net deposits, net premiums, or net assessments for the previous policy year,  
20 rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible,  
21 one hundred ten percent of the moneys to be paid from the second injury fund in the following  
22 calendar year, less any moneys contained in the fund at the end of the previous [calendar] **fiscal**  
23 year. All policyholders and self-insurers shall be notified by the division of workers'  
24 compensation within ten calendar days of the determination of the surcharge percent to be  
25 imposed for, and paid in, the following calendar year. The net premium equivalent for individual  
26 self-insured employers and any group of political subdivisions of this state qualified to  
27 self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall  
28 be based on average rate classifications calculated by the department of insurance, **financial**  
29 **institutions and professional registration** as taken from premium rates filed by the twenty  
30 insurance companies providing the greatest volume of workers' compensation insurance coverage

31 in this state. For employers qualified to self-insure their liability pursuant to this chapter, the  
32 rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall  
33 be the net premium equivalent. The **division** director may, **with the advice of the chair of the**  
34 **senate appropriation committee and the chair of the house budget committee**, advance  
35 [funds] **moneys** from the workers' compensation fund to the second injury fund if surcharge  
36 collections prove to be insufficient. Any [funds] **moneys** advanced from the workers'  
37 compensation fund to the second injury fund [must] **shall** be reimbursed by the second injury  
38 fund **beginning with a payment of at least twenty-five percent of the amount advanced** no  
39 later than [December thirty-first of the year] **twenty-four months** following the advance.  
40 **Repayment of the aggregate unpaid amount of the advance shall be completed within five**  
41 **years of the date of the advance. After the initial payment of twenty-five percent, the**  
42 **remaining amount of the repayment shall be in amounts of not less than twenty-five**  
43 **percent of the amount of the initial advance.** The surcharge shall be collected from  
44 policyholders by each insurer at the same time and in the same manner that the premium is  
45 collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or  
46 commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

49 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and  
50 insurers shall pay the amounts not later than the thirtieth day of the month following the end of  
51 the quarter in which the amount is received from policyholders. **Payments required under this**  
52 **section shall be deemed made the earlier of either the date postmarked by the United States**  
53 **Post Office on the envelope or container in which such paper is received or the date**  
54 **certified by a commercial delivery service as the date its customer deposited for delivery**  
55 **and paid such delivery charges the envelope or container in which such paper is received.**  
56 **For electronic payments or electronic transfer of funds, payments required under this**  
57 **section shall be deemed made on the date the funds are received by the division.** If the  
58 director of the division of workers' compensation fails to calculate the surcharge by the  
59 thirty-first day of October of any year for the following year, any increase in the surcharge  
60 ultimately set by the director shall not be effective for any calendar quarter beginning less than  
61 sixty days from the date the director makes such determination. **If after the end of any**  
62 **calendar year, the amount of the actual surcharge due is less than the total amount of the**  
63 **installments actually paid, the amount by which the amount paid exceeds the amount due**  
64 **shall only be credited against the surcharge for the following year and deducted from the**  
65 **quarterly installment due on June first and any other payments required by this section**  
66 **until the credit is exhausted. In the event no such payments are due and upon application**

67 **of the insurer or self-insurer to the director of the division of workers' compensation, the**  
68 **director of revenue may refund the amount of credit if no other obligation is owed to the**  
69 **state. The procedure for the refund is set forth in section 287.745.**

70       5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer  
71 fails to make timely transfer to the division of surcharges actually collected from policyholders,  
72 as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or  
73 untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties  
74 assessed under this subsection shall be collected in a civil action by a summary proceeding  
75 brought by the director of the division of workers' compensation.

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