

SECOND REGULAR SESSION

# HOUSE BILL NO. 1808

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COX.

Read 1st time January 24, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4458L.01I

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### AN ACT

To repeal sections 287.141, 287.280, 287.380, 287.690, 287.710, 287.715, 287.717, 287.745, and 287.957, RSMo, and to enact in lieu thereof ten new sections relating to workers' compensation, with penalty provisions.

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

Section A. Sections 287.141, 287.280, 287.380, 287.690, 287.710, 287.715, 287.717, 287.745, and 287.957, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 287.141, 287.280, 287.380, 287.382, 287.690, 287.710, 287.715, 287.717, 287.745, and 287.957, to read as follows:

287.141. 1. The purpose of this section is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical rehabilitation shall be under the control of and administered by the director of the division of workers' compensation. The division of workers' compensation shall make such rules and regulations as may be necessary to carry out the purposes of this section, subject to the approval of the labor and industrial relations commission of Missouri.

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and

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.

13 physical restoration services. No facility or institution shall be considered as qualified unless it  
14 is equipped to provide physical rehabilitation services for persons suffering either from some  
15 specialized type of disability or general type of disability within the field of industrial injury, and  
16 unless such facility or institution is operated under the supervision of a physician qualified to  
17 render physical rehabilitation service and is staffed with trained and qualified personnel and has  
18 received a certificate of qualification from the division of workers' compensation. No physician  
19 shall be considered as qualified unless he has had the experience prescribed by the division.

20         3. In any case of serious injury involving disability following the period of rendition of  
21 medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is  
22 necessary if the employer or insurer shall offer such physical rehabilitation to the injured  
23 employee and such physical rehabilitation is accepted by the employee, then in such case the  
24 director of the division of workers' compensation shall be immediately notified thereof and  
25 thereupon enter his approval to such effect, and the director of the division of workers'  
26 compensation shall requisition the payment of forty dollars per week benefit from the second  
27 injury fund in the state treasury to be paid to the employee while he is actually being  
28 rehabilitated, and shall immediately notify the state treasurer thereof by furnishing him with a  
29 copy of his order. But in no case shall the period of physical rehabilitation extend beyond twenty  
30 weeks except in unusual cases and then only by a special order of the division of workers'  
31 compensation for such additional period as the division may authorize. **As used in this section,**  
32 **"serious injury" includes, but is not limited to, quadriplegia, paraplegia, amputation of**  
33 **hand, arm, leg, atrophy to nerve injury or nonuse, and back injuries not amenable alone**  
34 **to recognized medical and surgical procedures.**

35         4. In all cases where physical rehabilitation is offered and accepted or ordered by the  
36 division, the employer or insurer shall have the right to select any physician, facility, or  
37 institution that has been found qualified by the division of workers' compensation as above set  
38 forth.

39         5. If the parties disagree as to such physical rehabilitation treatment, where such  
40 treatment appears necessary, then either the employee, the employer, or insurer may file a request  
41 with the division of workers' compensation for an order for physical rehabilitation and the  
42 director of the division shall hear the parties within ten days after the filing of the request. The  
43 director of the division shall forthwith notify the parties of the time and place of the hearing, and  
44 the hearing shall be held at a place to be designated at the discretion of the division. The director  
45 of the division may conduct such hearing or he may direct one of the administrative law judges  
46 to conduct same. Such hearing shall be informal in all respects. The director of the division  
47 shall, after considering all evidence at such hearing, within ten days make his order in the matter,  
48 either denying such request or ordering the employer or insurer within a reasonable time, to

49 furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of  
50 the employer or insurer. When the order requires physical rehabilitation, it shall also include an  
51 order to requisition the payment of forty dollars per week out of the second injury fund in the  
52 state treasury to the injured employee during such time as such employee is actually receiving  
53 physical rehabilitation.

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

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

60 8. An [appeal from any] order of the division of workers' compensation [hereby created  
61 to the appellate court may be taken and governed in all respects in the same manner as appeals  
62 in workers' compensation cases generally under section 287.495] **shall be deemed an award  
63 and subject to review and appeal in the same manner as provided for other awards in this  
64 chapter.**

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an  
2 individual or group basis, insure [his] **its** entire liability thereunder, except as hereafter provided,  
3 with some insurance carrier authorized to insure such liability in this state[, except that] . An  
4 employer or group of employers may themselves carry the whole [or any part of the] liability  
5 without insurance upon satisfying the division of their ability [so] to do **so by meeting the  
6 requirements set forth in the rules promulgated by the division. Groups of employers as  
7 defined in the rule shall self-insure their liability as a trust. The division may grant  
8 conditional authority to the employer or trust to self-insure its workers' compensation  
9 liabilities under this chapter and as set forth in the rules.**

10 2. (1) **As a condition of being granted self-insurance authority by the division, the  
11 employer or trust shall post security in the amount determined by the division based upon  
12 a review consisting of, but not limited to the following:**

13 (a) **Annual reports or audited financial statements;**

14 (b) **Up to five years' loss history; and**

15 (c) **Known or potential hazards in the workplace and its potential for producing  
16 an occupational illness or injury and the financial risks associated with these hazards.**

17

18 **Security shall be posted in a division-approved form and by escrow agreement, surety  
19 bond, or an irrevocable letter of credit, as defined and explained in the rules promulgated  
20 by the division. When a group of employers enter into an agreement to pool its liabilities**

21 under this chapter, individual members shall not be required to qualify as individual self-  
22 insurers but shall be jointly and severally liable for all obligations of the group of  
23 employers. The division may require the self-insured employer or trust to post additional  
24 security thereafter or at a later date based on either a quarterly or annual financial  
25 evaluation, the amount of outstanding losses, estimated current year losses, and financial  
26 statements and other factors. Failure to post the additional security within the time period  
27 defined by the division may result in the suspension or revocation of the employer's or  
28 trust's self-insurance authority. The division has the right to retain the security posted by  
29 the employer or trust after the termination, suspension, revocation of the employer's or  
30 trust's self-insurance authority and based upon the criteria and standards defined in the  
31 rules.

32 (2) A current, former, or withdrawing self-insured employer or trust shall, at the  
33 request of the division, provide a certified opinion of an independent actuary who is a  
34 member of the American Academy of Actuaries of the actuarial value of the determined  
35 and estimated future compensation payments of the losses, in the event it is unwilling to  
36 maintain security in the amount required by the division, it is insolvent, it files for  
37 bankruptcy protection, or is unable or fails to honor its compensation obligations under  
38 this chapter for the self-insured period. In the event a current, former, or withdrawing  
39 self-insured employer or trust who either voluntarily terminated its self-insurance  
40 authority or whose authority was suspended, revoked, or terminated by the division refuses  
41 to provide such actuarial opinion or report to the division, the division may institute the  
42 necessary legal action and obtain an order from the circuit court through the attorney  
43 general's office requiring the current, voluntary, or involuntary former or withdrawing  
44 self-insured employer or trust or its successors in interest to provide such actuarial opinion  
45 or report and order any other relief that the court determines is appropriate, including  
46 reasonable attorney's fees and costs pertaining thereto.

47 (3) If a self-insured employer or group self-insurer reincorporates, merges,  
48 consolidates, or undergoes any other corporate change, it shall provide the division with  
49 the plan of merger or plan of consolidation or other ownership and corporate change  
50 approved by the affirmative vote of the holders of at least two-thirds of the outstanding  
51 shares entitled to vote at the meeting where the corporate change was submitted. The self-  
52 insured employer or group shall provide the division with the appropriate documentation  
53 to enable the division to evaluate whether the entity needs to apply for separate self-  
54 insurance authority after the change. The division has the right to terminate the self-  
55 insurance authority of the employer or group for its failure to provide the requested  
56 documentation evidencing corporate change. A self-insured employer or group who,

57 **because of a legal change in business or corporate structure or in its legal name or for**  
58 **failure to provide the documentation had its self-insurance authority terminated may have**  
59 **its certificate to self-insure reinstated without lapse, upon satisfying the division of its**  
60 **ability to meet the requirements set forth in the rules promulgated by the division.**

61 (4) If an employer or group of employers have qualified to self-insure their liability under  
62 this chapter, the division [of workers' compensation] may, if it finds [after a hearing that the  
63 employer or group of employers are willfully and intentionally violating the provisions of this  
64 chapter with intent to defraud their employees of their right to compensation,] **an employer or**  
65 **group of employers failed to comply with the requirements of this section or as set forth**  
66 **in the rules to self-insure its liability, suspend [or] , revoke, or terminate** the right of the  
67 employer or group of employers to self-insure their liability. **The division may reinstate the**  
68 **self-insurance authority of an employer or group of employers without lapse upon being**  
69 **satisfied of the employer or group of employer's ability to meet the requirements set forth**  
70 **in the rules promulgated by the division.**

71 (5) If the employer or group of employers fail to comply with this section, an injured  
72 employee or [his] **the employee's** dependents may elect after the injury either to bring an action  
73 against such employer or group of employers to recover damages for personal injury,  
74 **occupational disease**, or death and it shall not be a defense that the injury, **occupational**  
75 **disease**, or death was caused by the negligence of a fellow servant, or that the employee had  
76 assumed the risk of the injury, **occupational disease**, or death, or that the injury, **occupational**  
77 **disease**, or death was caused to any degree by the negligence of the employee; or to recover  
78 under this chapter with the compensation payments commuted and immediately payable[; or, if  
79 the employee elects to do so, he or she may file a request with the division for payment to be  
80 made for medical expenses out of the second injury fund as provided in subsection 5 of section  
81 287.220]. [If the employer or group of employers are carrying their own insurance, on the  
82 application of any person entitled to compensation and on proof of default in the payment of any  
83 installment, the division shall require the employer or group of employers to furnish security for  
84 the payment of the compensation, and if not given, all other compensation shall be commuted  
85 and become immediately payable; provided, that employers engaged in the mining business shall  
86 be required to insure only their liability hereunder to the extent of the equivalent of the maximum  
87 liability under this chapter for ten deaths in any one accident, but the employer or group of  
88 employers may carry their own risk for any excess liability. When a group of employers enter  
89 into an agreement to pool their liabilities under this chapter, individual members will not be  
90 required to qualify as individual self-insurers.]

91 (6) **If an employer who has been granted self-insurance authority by the division**  
92 **is a self-insurer in default, the division shall call upon the entire security posted by the**

93 employer. As used in this section, "self-insurer in default" means an individual private  
94 sector employer that has defaulted or failed for any reason to satisfy any of its obligations  
95 that are owed to an injured employee or employee's dependants under this chapter, as  
96 determined by the division, including, without limitation, all obligations for payment of  
97 indemnity compensation, disability, expenses of medical, hospital, surgical, rehabilitation,  
98 and other services, death benefits and funeral expenses, whether based upon stipulation  
99 approved under section 287.390 or based upon an award issued under this chapter or  
100 otherwise or whether or not such default or failure is the result of insolvency, bankruptcy,  
101 receivership, or otherwise. The division shall forward all known losses of a current,  
102 former, or withdrawing self-insured employer to the Missouri private sector individual  
103 self-insurers guaranty corporation created under sections 287.860 to 287.885. The division  
104 may refer all known losses or cases of an employer prior to 1992, to a third-party  
105 administrator or any such entity authorized in this state to administer the workers'  
106 compensation cases. The third-party administrator or entity to whom the losses are  
107 transferred shall be entitled to receive the security proceeds from the division and use the  
108 proceeds after deducting reasonable administrative expenses approved by the division to  
109 pay the compensation benefits owed of a self-insured employer prior to 1992, under this  
110 chapter. The security proceeds shall not be state property and shall not be subject to  
111 appropriation by the legislature, the treasurer, or any other state agency. Any unused  
112 portion of the security proceeds shall be returned to the division or transferred to the  
113 Missouri private sector individual self-insurers guaranty corporation to administer,  
114 defend, and pay the claims of the member self-insurer in default. The employer may apply  
115 to the division for release of the unused portion of the security proceeds as set forth in the  
116 rules and regulations promulgated by the division.

117 (7) If a group of employers or trust who has been granted self-insurance authority  
118 by the division fails to pay any of its obligations that are owed to an injured employee or  
119 employee's dependants under this chapter, as determined by the division, including,  
120 without limitation, all obligations for payment of indemnity compensation, disability,  
121 expenses of medical, hospital, surgical, rehabilitation, and other services, death benefits  
122 and funeral expenses, whether based upon stipulation approved under section 287.390 or  
123 based upon an award issued under this chapter or otherwise, the division shall call upon  
124 the entire security posted by the group of employers or trust. The division may refer all  
125 known losses or cases of the group of employers to a third-party administrator or any such  
126 entity authorized in this state to administer the workers' compensation cases. The third-  
127 party administrator or entity to whom the losses are transferred shall be entitled to receive  
128 the security proceeds from the division and use the proceeds after deducting reasonable

129 **administrative expenses approved by the division to pay the compensation benefits owed**  
130 **under this chapter. The security proceeds shall not be state property and shall not be**  
131 **subject to appropriation by the legislature, the treasurer, or any other state agency. Any**  
132 **unused portion of the security proceeds shall be returned to the division. The group of**  
133 **employers may apply to the division for release of the unused portion of the security**  
134 **proceeds as set forth in the rules and regulations promulgated by the division.**

135 **3.** Groups of employers qualified to insure their liability pursuant to chapter 537, RSMo,  
136 **[or] except the Missouri public entity risk management fund which is governed by sections**  
137 **537.700 to 537.755, RSMo, shall meet all requirements established by the division under**  
138 **this section. All division approved self-insured groups of employers under this chapter[.]**  
139 shall utilize a uniform experience rating plan promulgated by an approved advisory organization.  
140 Such groups shall develop experience ratings for their members based on the plan. Nothing in  
141 this section shall relieve an employer from remitting, without any charge to the employer, the  
142 employer's claims history to an approved advisory organization.

143 **[3.] 4.** For every entity qualified to group self-insure their liability pursuant to this  
144 chapter or chapter 537, RSMo, each entity shall not authorize total discounts for any individual  
145 member exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based  
146 on objective quantitative factors and applied uniformly to all trust members.

147 **[4.] 5.** Any group of employers that have qualified to self-insure their liability pursuant  
148 to this chapter shall file with the division premium rates, based on pure premium rate data,  
149 adjusted for loss development and loss trending as filed by the advisory organization with the  
150 department of insurance pursuant to section 287.975, plus any estimated expenses and other  
151 factors or based on average rate classifications calculated by the department of insurance as taken  
152 from the premium rates filed by the twenty insurance companies providing the greatest volume  
153 of workers' compensation insurance coverage in this state. The rate is inadequate if funds equal  
154 to the full ultimate cost of anticipated losses and loss adjustment expenses are not produced  
155 when the prospective loss costs are applied to anticipated payrolls. [The provisions of this  
156 subsection shall not apply to those political subdivisions of this state that have qualified to  
157 self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, on an  
158 assessment plan. Any such group may file with the division a composite rate for all coverages  
159 provided under that section.

160 **5.] 6.** **If the trustees are unable to collect assessment moneys from the individual**  
161 **members of the trust to make up for insufficient funds in the claims account to pay for the**  
162 **workers' compensation obligations as they become due or the claims account is depleted**  
163 **to zero, the trustees shall provide the division with an accounting of all assessment moneys**  
164 **collected for the years the trust was self-insured. In the event the trustees do not provide**

the division with the accounting, the division shall take necessary measures, including filing any legal action to obtain the accounting, financial records, and other relevant information and records, including access to the bank accounts, at the expense of the members of the trust. If the money in the claims account is depleted, then in addition to calling upon the security posted by the self-insured trust, the division may take appropriate legal action as authorized by law. All expenses associated with paying the claims shall be deducted from the security posted with the division or will be borne by the trust or its members. The division shall determine how claims shall be paid, including pro rata payment of claims if the funds are insufficient to pay both existing and new claims. The division shall have the right to attend all board meetings and receive prior notice of the meetings. The board of directors at the board meeting or at a later date shall not take any action that adversely impacts upon the financial ability of the trust to honor and pay its workers' compensation obligations.

7. The self-insured employer, group, or trust may request an evidentiary hearing before an administrative law judge within thirty days from the date of the final order of the division to terminate, revoke, or suspend the self-insurance status of the employer, group, or trust, deny the release or reduction of the security request, or increase the security to be posted. The hearing shall be a simple, informal proceeding. The rules of evidence in civil cases in the state of Missouri shall apply. In any proceeding before the administrative law judge under this section, the burden of proof shall be on the employer, group, or trust, except where the division files a petition to revoke the self-insurance authority of the employer, group, or trust with the administrative law judge. Any finding or determination made after an evidentiary hearing by the [division] division's administrative law judge under this section may be reviewed as provided in sections [287.470 and] 287.480 and 287.495. If an application for review is not filed with the labor and industrial relations commission, then the decision or award of the administrative law judge is final and binding on the parties. If the self-insured employer or trust does not file a request for an evidentiary hearing before the administrative law judge within thirty days from the date of the final order of the division to either terminate, revoke, or suspend the self-insurance status of the employer, group, or trust, or deny the release or reduction of the security request, or increase the security to be posted, the division's decision shall be final.

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

7.] 8. Any records, documents, or statements submitted by the self-insured employer, group, or trust pursuant to this section, and pursuant to any rule promulgated by the division



201 pursuant to this section, shall be considered confidential and not subject to chapter 610, RSMo.  
202 [Any party to a workers' compensation case involving the party that submitted the records shall  
203 be able to subpoena the records for use in a workers' compensation case, if the information is  
204 otherwise relevant.] **Any claimant or the self-insured employer, group, or trust that**  
205 **submitted the records, documents, or statements to the division under this section and**  
206 **against whom a claim for compensation has been filed in the underlying workers'**  
207 **compensation case, or its authorized representative, shall be supplied with relevant**  
208 **information from the division's records to the extent necessary for the proper preparation**  
209 **and presentation of the case under a subpoena. The relevant records or documents**  
210 **produced by the division consistent with the subpoena shall not be secondarily released.**  
211 **No person, including the employees of the division shall be held liable for slander or libel**  
212 **on account of any such information.**

287.380. 1. Every employer or his insurer in this state, [whether he has accepted or  
2 rejected the] **who is subject to or has elected to be governed by the** provisions of this chapter,  
3 shall within thirty days after knowledge of the injury, file with the division **by filing or**  
4 **reporting by electronic data transmission to the division** under such rules and regulations and  
5 in such form **or format** and detail as the division may require, a full and complete report of every  
6 injury or death to any employee for which the employer would be liable to furnish medical aid,  
7 other than immediate first aid which does not result in further medical treatment or lost time  
8 from work, or compensation hereunder [had he accepted this chapter, and] . Every employer or  
9 insurer shall also furnish the division with such supplemental reports in regard thereto as the  
10 division shall require. All reports submitted **or electronically reported** under this subsection  
11 shall include the name, address, date of birth, **Social Security number** and wages of the  
12 deceased or injured employee, the time and cause of the accident, the nature and extent of the  
13 injury, the name and address of the [employee's and the employer's or insurer's attorney of record,  
14 if any] **employer, insurer, or third-party administrator**, the medical cost incurred in treating  
15 the injured employee, the amount of lost work time of the employee as a result of the injury and  
16 such other information as the director may reasonably require in order to maintain in the division,  
17 accurate and complete data on the impact of work-related injuries on the workers' compensation  
18 system. [The division shall collect and maintain such data in such a form as to be readily  
19 retrieved and available for analysis by the division.] Employers shall report all injuries to their  
20 insurance carrier, or third-party administrators, if applicable, within five days of the date of the  
21 injury or within five days of the date on which the injury was reported to the employer by the  
22 employee, whichever is later. Where an employer reports injuries covered pursuant to this  
23 chapter to his insurer or third-party administrator, the insurer or third-party administrator shall  
24 be responsible for filing **or electronically submitting** the report prescribed in this section. **A**

25 reporter who electronically submits the first report of injury to the division on behalf of  
26 the employer shall sign a written electronic partnering agreement with the division. The  
27 division may set performance requirements for any reporter submitting data electronically.  
28 No report filed under this section shall be deemed filed until the paper report or electronic  
29 transmission thereof has been received and accepted by the division. As used in this  
30 section, "reporter" means the insurance carrier, third-party administrator, service  
31 company, or self-insured, self-administered employers who have been granted permission  
32 by the division to electronically submit or receive information from the division.

33       2. The division shall collect and maintain such data in such a form as to be readily  
34 retrieved and available for analysis by the division. The data collected electronically shall  
35 be compatible with the electronic data interchange system of the International Association  
36 of Industrial Accident Boards and Commissions. The director may adopt rules authorizing  
37 the use of other nationally recognized data transmission formats in addition to those set  
38 forth in the electronic data interchange system for transmissions of data required under  
39 this section. The director shall accept data transmissions in any authorized format. If the  
40 director determines that any authorized data transmission format is not in general use by  
41 the reporter, conflicts with the requirements of state or federal law, or is obsolete, the  
42 director may refuse to accept the transmission format from those authorized under this  
43 subsection.

44       3. Every employer and his insurer, and every injured employee, his dependents and every  
45 person entitled to any rights hereunder, and every other person receiving from the division or the  
46 commission any blank reports with direction to fill out the same shall cause the same to be  
47 promptly returned to the division or the commission properly filled out and signed so as to  
48 answer fully and correctly to the best of his knowledge each question propounded therein, and  
49 a good and sufficient reason shall be given for failure to answer any question.

50       [3. No information obtained under the provisions of this section shall be disclosed to  
51 persons other than the parties to compensation proceedings and their attorneys, except by order  
52 of the division or the commission, or at a hearing of compensation proceeding, but such  
53 information may be used by the division or the commission for statistical purposes.]

54       4. (1) Except as otherwise provided in this section, the following records are  
55 confidential and exempt from disclosures under chapter 610, RSMo:

56       (a) Any and all records that are submitted to the division by an individual  
57 employer, group of employers, or trust in support of an application for self-insurance  
58 authority, and reports submitted to remain in compliance with the self-insurance authority  
59 under section 287.280 and rules and regulations applicable thereto;

60           (b) First reports of injury, whether original or amended and whether filed in paper  
61 format or electronically with the division under this section. Supplemental reports filed  
62 with the division whether in paper format or electronically concerning the injury or  
63 benefits paid to the injured worker;

64           (c) Loss data information submitted to the division by a self-insured employer or  
65 group of employers or trust or its third-party administrator under section 287.280 and  
66 rules and regulation applicable thereto;

67           (d) Any and all medical records or reports submitted to the division under this  
68 chapter;

69           (e) Correspondence submitted to the division by any party to the underlying  
70 workers' compensation case;

71           (2) The division may release, disclose, or publish information described in  
72 subdivision (1) of this subsection under the following circumstances:

73           (a) In the case of paragraph (a), (b), or (c) of subdivision (1) of this subsection, the  
74 division may disclose or publish aggregate information for statistical or research purposes  
75 so long as it is disclosed or published in such a way that the confidentiality of information  
76 concerning individual workers or the financial records of individual employers or self-  
77 insured employers, group of employers, trusts, or insurers is protected;

78           (b) In the case of paragraph (b) of subdivision (1) of this subsection, the division  
79 may release information to another governmental agency if the governmental agency  
80 provides the division with sufficient assurance that it will preserve the confidentiality of  
81 the information. The other agency may use such information to determine the eligibility  
82 of an individual for benefits provided or regulated by the agency. Nothing in this  
83 paragraph prohibits the division from disclosing or releasing records to the commission;

84           (c) Information that is disclosed or released under paragraph (a) or (b) of this  
85 subdivision shall continue to be exempt from disclosure under chapter 610, RSMo;

86           (3) The confidentiality provided in paragraphs (b), (d), and (e) of subdivision (1)  
87 of this subsection shall not apply to a workers' compensation proceeding pending before  
88 the division and shall be disclosed to the parties to the compensation proceedings and their  
89 attorneys;

90           (4) Notwithstanding any other provision to the contrary, this section shall not limit  
91 the power of a court of law to subpoena records relevant to a matter pending before it;

92           (5) The division shall disclose and release records to a nonparty to the underlying  
93 workers' compensation case upon receiving either a duly executed and notarized  
94 authorization to release workers' compensation records from the employee or a subpoena  
95 under section 287.560.

96           **5.** Any person, including any employer, insurer or any employee, who violates any of the  
97 provisions of this section, including any employer or insurer **or reporter** who knowingly fails  
98 to report any accident under the provisions of subsection 1 of this section, or anyone who  
99 knowingly makes a false report or statement in writing to the division or the commission, shall  
100 be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not  
101 less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not  
102 less than one week nor more than one year, or by both the fine and imprisonment.

**287.382. Papers, documents, reports, or evidence in the possession of an insurer or  
2 self-insured employer relative to the subject of an investigation by the division of workers'  
3 compensation shall be made available upon request to the division so long as the division  
4 deems such information reasonably necessary to complete the investigation and any  
5 subsequent legal action. No insurer, employee, or agent of any insurer, or any other person  
6 acting without malice shall be subject to civil liability for libel or otherwise by virtue of the  
7 filing of reports or furnishing other information required by the division.**

          287.690. 1. Prior to December 31, 1993, for the purpose of providing for the expense  
2 of administering this chapter and for the purpose set out in subsection 2 of this section, every  
3 person, partnership, association, corporation, whether organized under the laws of this or any  
4 other state or country, the state of Missouri, including any of its departments, divisions, agencies,  
5 commissions, and boards or any political subdivisions of the state who self-insure or hold  
6 themselves out to be any part self-insured, company, mutual company, the parties to any  
7 interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring  
8 employers in this state against liability for personal injuries to their employees, or for death  
9 caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net  
10 deposits, net premiums or net assessments received, whether in cash or notes in this state, or on  
11 account of business done in this state, for such insurance in this state at the rate of two percent  
12 in lieu of all other taxes on such net deposits, net premiums or net assessments, which amount  
13 of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and  
14 every year thereafter, the director of the division of workers' compensation shall estimate the  
15 amount of revenue required to administer this chapter and the director shall determine the rate  
16 of tax to be paid in the following calendar year pursuant to this section commencing with the  
17 calendar year beginning on January 1, 1994. If the balance of the fund estimated to be on hand  
18 on December thirty-first of the year each tax rate determination is made is less than one hundred  
19 ten percent of the previous year's expenses plus any additional revenue required due to new  
20 statutory requirements given to the division by the general assembly, then the director shall  
21 impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums  
22 or net assessments, rounded up to the nearest one-half of a percentage point, which amount of

23 taxes shall be assessed and collected as herein provided. The net premium equivalent for  
24 individual self-insured employers and any group of political subdivisions of this state qualified  
25 to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo,  
26 shall be based on average rate classifications calculated by the department of insurance as taken  
27 from premium rates filed by the twenty insurance companies providing the greatest volume of  
28 workers' compensation insurance coverage in this state. For employers qualified to self-insure  
29 their liability pursuant to this chapter, the rates filed by such group of employers in accordance  
30 with subsection [2] 3 of section 287.280 shall be the net premium equivalent. Every entity  
31 required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by  
32 the division of workers' compensation within ten calendar days of the date of the determination  
33 of the rate of tax to be imposed for the following year. Net premiums, net deposits or net  
34 assessments are defined as gross premiums, gross deposits or gross assessments less canceled  
35 or returned premiums, premium deposits or assessments and less dividends or savings, actually  
36 paid or credited.

37 2. After January 1, 1994, the director of the division shall make one or more loans to the  
38 Missouri employers mutual insurance company in an amount not to exceed an aggregate amount  
39 of five million dollars from the fund maintained to administer this chapter for start-up funding  
40 and initial capitalization of the company. The board of the company shall make application to  
41 the director for the loans, stating the amount to be loaned to the company. The loans shall be for  
42 a term of five years and, at the time the application for such loans is approved by the director,  
43 shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by  
44 the state treasurer pursuant to section 30.758, RSMo.

287.710. 1. Every such insurance carrier or self-insurer, on or before the first day of  
2 March of each year, shall make a return, verified by the affidavit of its president and secretary  
3 or other chief officers or agents, to the director of the department of insurance, stating the amount  
4 of all such gross premiums or deposits and credits during the year ending on the thirty-first day  
5 of December, next preceding.

6 2. The amount of the tax due for each calendar year shall be paid in four approximately  
7 equal estimated quarterly installments, and a fifth reconciling installment. The first four  
8 installments shall be based upon the application of the current calendar year's tax rate to the  
9 premium for the immediately preceding taxable year ending on the thirty-first day of December,  
10 next preceding. The quarterly installments shall be made on the first day of March, the first day  
11 of June, the first day of September and the first day of December. Immediately after receiving  
12 certification from the director of the department of insurance of the amount of tax due from the  
13 various companies or self-insurers, the director of revenue shall notify and assess each company  
14 or self-insurer the amount of taxes on its premiums for the calendar year ending on the thirty-first

15 day of December, next preceding. The director of revenue shall also notify and assess each  
16 company or self-insurer the amount of the estimated quarterly installments to be made for the  
17 calendar year. If the amount of the actual tax due for any year exceeds the total of the  
18 installments made for such year, the balance of the tax due shall be paid on the first day of June  
19 of the year following, together with the regular quarterly payment due at that time. If the total  
20 amount of the tax actually due is less than the total amount of the installments actually paid, the  
21 amount by which the amount paid exceeds the amount due shall be credited against the tax for  
22 the following year and deducted from the quarterly installment otherwise due on the first day of  
23 **June and any other payments required by this section until the credit is exhausted. In the**  
24 **event no such payments are due, the overpaid amount shall be refunded in accordance with**  
25 **the procedures set forth in section 287.745.** If the March first quarterly installment made by  
26 a company or self-insurer is less than the amount assessed by the director of revenue, the  
27 difference will be due on June first, but no interest will accrue to the state on the difference  
28 unless the amount paid by the company or self-insurer is less than eighty percent of one-fourth  
29 of the total amount of tax assessed by the director of revenue for the immediately preceding  
30 taxable year.

31         3. Upon the receipt of the returns and verification by the director of the division of  
32 workers' compensation as to the percent of tax to be imposed, the director of the department of  
33 insurance shall certify the amount of tax due from the various insurance carriers or self-insurers  
34 on the basis and at the rate provided in section 287.690, and make a schedule thereof, duplicate  
35 copies of which, properly certified by the director, shall be filed in the offices of the revenue  
36 department, the state treasurer, and the division of workers' compensation on or before the  
37 thirtieth day of April of each year. If the taxes provided for in this section are not paid, the  
38 department of revenue shall certify the fact to the director of the department of insurance who  
39 shall thereafter suspend the delinquent carriers of insurance or self-insurers from the further  
40 transaction of business in this state until the taxes are paid.

41         4. Upon receipt of the money all such moneys shall be deposited to the credit of the fund  
42 for the support of the division of workers' compensation.

43         5. The tax collected for implementing the workers' compensation fund, and any interest  
44 accruing thereon, under the police power of the state from those specified in sections 287.690,  
45 287.715, and 287.730 shall be used for the purpose of making effective the law to relieve victims  
46 of industrial injuries from having individually to bear the burden of misfortune or becoming  
47 charges upon society and for the further purpose of providing for the physical rehabilitation of  
48 the victims of industrial injuries, and for no other purposes. It is hereby made the express duty  
49 of every person exercising any official authority or responsibility in and for the state of Missouri

50 sacredly to safeguard and preserve all funds collected, and any interest accruing thereon, under  
51 and by virtue of sections 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

52 6. The funds created by virtue of sections 287.220, 287.690, 287.715, and 287.730 shall  
53 be exempt from the provisions of section 33.080, RSMo, specifically as they relate to the transfer  
54 of fund balances and any interest thereon to the ordinary revenue, and the director of the division  
55 of workers' compensation may direct the state treasurer to invest all or part of these funds in  
56 interest-bearing accounts as provided in article IV, section 15 of the Constitution of the state of  
57 Missouri, and any unexpended balance in the second injury fund at the end of any appropriation  
58 period shall be a credit in the second injury fund and shall be the amount of the fund at the  
59 beginning of the appropriation period next immediately following.

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

27 as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated  
28 by the department of insurance as taken from premium rates filed by the twenty insurance  
29 companies providing the greatest volume of workers' compensation insurance coverage in this  
30 state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed  
31 by such group of employers in accordance with subsection [2] 3 of section 287.280 shall be the  
32 net premium equivalent. The director may advance funds from the workers' compensation fund  
33 to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced  
34 from the workers' compensation fund to the second injury fund must be reimbursed by the  
35 second injury fund no later than December thirty-first of the year following the advance. The  
36 surcharge shall be collected from policyholders by each insurer at the same time and in the same  
37 manner that the premium is collected, but no insurer or its agent shall be entitled to any portion  
38 of the surcharge as a fee or commission for its collection. The surcharge is not subject to any  
39 taxes, licenses or fees.

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

42 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and  
43 insurers shall pay the amounts not later than the thirtieth day of the month following the end of  
44 the quarter in which the amount is received from policyholders. **Payments required under this**  
45 **section shall be deemed made the earlier of either the date postmarked by the United States**  
46 **Post Office on the envelope or container in which such paper is received or the date**  
47 **certified by a commercial delivery service as the date its customer deposited for delivery**  
48 **and paid such delivery charges the envelope or container in which such paper is received.**  
49 **For electronic payments or electronic transfer of funds, payments required under this**  
50 **section shall be deemed made on the date the funds are received by the division.** If the  
51 director of the division of workers' compensation fails to calculate the surcharge by the  
52 thirty-first day of October of any year for the following year, any increase in the surcharge  
53 ultimately set by the director shall not be effective for any calendar quarter beginning less than  
54 sixty days from the date the director makes such determination. **If after the end of any**  
55 **calendar year, the amount of the actual surcharge due is less than the total amount of the**  
56 **installments actually paid, the amount by which the amount paid exceeds the amount due**  
57 **shall only be credited against the surcharge for the following year and deducted from the**  
58 **quarterly installment due on June first and any other payments required by this section**  
59 **until the credit is exhausted. In the event no such payments are due and upon application**  
60 **of the insurer or self-insurer to the director of the division of workers' compensation, the**  
61 **director of revenue may refund the amount of credit if no other obligation is owed to the**  
62 **state. The procedure for the refund is set forth in section 287.745.**



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

          287.717. 1. Beginning January 1, 2004, the administrative surcharge established  
2 pursuant to section 287.716 shall be collected from deductible plan policyholders by each insurer  
3 at the same time and in the same manner that the premium is collected, but no insurer or its agent  
4 shall be entitled to any portion of the administrative surcharge as a fee or commission for its  
5 collection. The administrative surcharge is not subject to any taxes, licenses, or fees.

6           2. All administrative surcharges imposed pursuant to section 287.716 shall be paid to  
7 the Missouri director of revenue and shall be deposited to the workers' compensation  
8 administrative fund.

9           3. The amount of the administrative surcharge due for the current calendar year shall be  
10 paid in four approximately equal estimated quarterly installments, and a fifth reconciling  
11 installment. The first four installments shall be based upon the amount of administrative  
12 surcharge payable in the calendar year for which the surcharge is imposed. The quarterly  
13 installments shall be made on the first day of March, the first day of June, the first day of  
14 September, and the first day of December. On or before the first day of March of each year,  
15 every such insurer shall submit a report, verified by the affidavit of its president and secretary  
16 or other chief officers or agents, to the director of the department of insurance, stating the amount  
17 of all such total premiums which would have been paid for the deductible portion.

18           4. If after the end of any calendar year, the amount of the actual administrative surcharge  
19 due is less than the total amount of the installments actually paid, the amount by which the  
20 amount paid exceeds the amount due shall only be credited against the administrative surcharge  
21 for the following year and deducted from the quarterly installment due on June first and any other  
22 payments required by this section until the credit is exhausted. In the event no such payments  
23 are due and upon application of the insurer **to the director of the division of workers'**  
24 **compensation**, the director of revenue may refund the amount of credit if no other obligation is  
25 owed to the state. **The procedure for the refund is set forth in section 287.745.**

26           5. If a deductible plan policyholder fails to make payment of the administrative  
27 surcharge, or an insurer fails to make timely transfer to the director of revenue of administrative  
28 surcharges actually collected from deductible plan policyholders, as required by this section, a  
29 late charge of one-half of one percent of the administrative surcharge unpaid, or transferred, shall  
30 be assessed against the liable deductible plan policyholder or insurer. Late charges assessed

31 pursuant to this subsection shall be collected in a civil action by a summary proceeding brought  
32 by the director of the division of workers' compensation.

33         6. If the administrative surcharges imposed by this section are not paid when due, the  
34 deductible plan policyholder or insurer shall be required to pay, as part of such administrative  
35 surcharge, interest thereon at the rate of one and one-half percent per month for each month or  
36 fraction thereof delinquent. In the event the state prevails in any dispute concerning an  
37 assessment of the administrative surcharge, which has not been paid by the policyholder or  
38 insurer, interest shall be paid upon the amount found due to the state at the rate of one and  
39 one-half percent per month for each month or fraction thereof delinquent.

40         7. The division may authorize electronic transfer of all forms, reports, payments, and  
41 other information deemed appropriate by the division as required pursuant to this section and  
42 sections 287.690, 287.710, 287.715, and 287.716. Information filed pursuant to this section and  
43 sections 287.690, 287.710, 287.715, and 287.716 and under any rules promulgated by the  
44 division pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716 shall be  
45 confidential and not subject to chapter 610, RSMo. **Nothing in this subsection prohibits the**  
46 **exchange of information between the department of revenue, the department of insurance,**  
47 **financial institutions, and professional registration, and the division of workers'**  
48 **compensation in order to fulfill the responsibilities under this chapter.**

49         8. This section shall not apply to any employer or group of employers authorized by the  
50 division to self-insure their liability pursuant to this chapter.

287.745. 1. If the tax imposed by sections 287.690[,] **and** 287.710, [and 287.715] are  
2 not paid when due, the taxpayer shall be required to pay, as part of such tax, interest thereon at  
3 the rate of one and one-half percent per month for each month [or fraction thereof] delinquent  
4 **prorated from the date payment is made. If the surcharge imposed by section 287.715 is**  
5 **not paid when due, the insurer or self-insurer shall be required to pay a late charge of one**  
6 **and one-half percent per month for each month delinquent prorated from the date**  
7 **payment is made.** [In the event the state prevails in any dispute concerning an assessment of  
8 tax which has not been paid by the taxpayer, interest shall be paid upon the amount found due  
9 to the state at the rate of one and one-half percent per month for each month or fraction thereof  
10 delinquent.]

11         2. In any legal contest concerning the amount of tax under sections 287.690[,] **and**  
12 287.710 and [287.715] **the surcharges under sections 287.715, 287.716, and 287.717** for a  
13 calendar year, the quarterly installments for the following year shall continue to be made based  
14 upon the amount assessed by the director of revenue for the year in question. [If after the end  
15 of any taxable year, the amount of the actual tax due is less than the total amount of the  
16 installments actually paid, the amount by which the amount paid exceeds the amount due shall

17 be credited against the tax for the following year and deducted from the quarterly installment  
18 otherwise due on June first.] **Upon application of the insurer or self-insurer to the director**  
19 **of the division of workers' compensation and verification, audit adjustments and approval**  
20 **by the director of the division of workers' compensation of the amounts overpaid, the**  
21 **director of revenue may refund the amount of overpayment if no other obligation is owed**  
22 **to the state or to the division of workers' compensation. Notwithstanding section 136.035,**  
23 **RSMo, all requests for refunds of taxes imposed under sections 287.690 and 287.710 and**  
24 **surcharges imposed under sections 287.715, 287.716, and 287.717 shall be filed directly**  
25 **with the division of workers' compensation. All such tax and surcharge refund requests**  
26 **shall be in writing and signed by the applicant and shall state the specific grounds upon**  
27 **which the request for refund is founded. After confirming that the refund is owed and the**  
28 **amount is accurate, the division of workers' compensation shall forward it to the**  
29 **department of revenue for payment.**

287.957. The experience rating plan shall contain reasonable eligibility standards,  
2 provide adequate incentives for loss prevention, and shall provide for sufficient premium  
3 differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive  
4 means of providing prospective premium adjustment based upon measurement of the  
5 loss-producing characteristics of an individual insured. An insurer may submit a rating plan or  
6 plans providing for retrospective premium adjustments based upon an insured's past experience.  
7 Such system shall provide for retrospective adjustment of an experience modification and  
8 premiums paid pursuant to such experience modification where a prior reserved claim produced  
9 an experience modification that varied by greater than fifty percent from the experience  
10 modification that would have been established based on the settlement amount of that claim.  
11 The rating plan shall prohibit an adjustment to the experience modification of an employer if the  
12 total medical cost does not exceed one thousand dollars and the employer pays all of the total  
13 medical costs and there is no lost time from the employment, other than the first three days or  
14 less of disability under subsection 1 of section 287.160, and no claim is filed. An employer  
15 opting to utilize this provision maintains an obligation to report the injury under subsection 1 of  
16 section 287.380. **A self-insured employer or member of a group qualified to insure its**  
17 **workers' compensation liability under this chapter or under chapter 537, RSMo, that has**  
18 **voluntarily withdrawn its self-insurance authority or had its self-insurance authority**  
19 **terminated or revoked shall continue to use the most recent experience modification factor**  
20 **utilized as a self-insured employer for up to three years or until such time as sufficient data**  
21 **is made available to the approved advisory organization so that an experience modification**  
22 **factor can be promulgated for that former self-insurer. Such experience modification**

- 23 **factor, supporting calculation, payroll, and loss history shall be provided by self-insurance**  
24 **groups to the self-insurance members within thirty days of request.**

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