

SECOND REGULAR SESSION

HOUSE BILL NO. 2308

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUNTER.

Read 1st time February 28, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5147L.02I

AN ACT

To repeal sections 287.020, 287.127, 287.200, 287.220, 287.230, 287.690, 287.710, 287.715, 287.745, and 288.130, RSMo, and to enact in lieu thereof twelve new sections relating to workers, with an emergency clause and penalty provisions.

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

Section A. Sections 287.020, 287.127, 287.200, 287.220, 287.230, 287.690, 287.710, 287.715, 287.745, and 288.130, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 213.140, 287.020, 287.127, 287.200, 287.220, 287.230, 287.690, 287.710, 287.715, 287.745, 288.130, and 290.594, to read as follows:

213.140. The Missouri commission on human rights shall provide every employer, labor organization, employment agency, business, or establishment that is required to post the commission's equal employment, fair housing, or public accommodation's poster, all required posters, free of charge. The printed statement contained in such posters shall in a clear and conspicuous manner, include language that describes the means by which the employer, labor organization, employment agency, business, or establishment may request and obtain any updated or replacement poster, and that distribution of such posters shall be free of charge upon request. The poster developed by the commission shall be the official poster to be posted in order for employers, labor organizations, employment agencies, businesses or establishments to gain compliance for all posting requirements required by the commission. The use of any other poster that deviates in any way, in form or content, from the official poster, shall not satisfy the requirements of this section.

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 **Nothing in this section shall be construed to preclude any individual from distributing a**
14 **replica of the poster described in this section, as long as the replica contains the content**
15 **described in this section and preserves the relative font size of each statement. The**
16 **commission may distribute the posters electronically.**

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.

 287.127. 1. Beginning January 1, 1993, all employers shall post a notice at their place
2 of employment, in a sufficient number of places on the premises to assure that such notice will
3 reasonably be seen by all employees. An employer for whom services are performed by
4 individuals who may not reasonably be expected to see a posted notice shall notify each such
5 employee in writing of the contents of such notice. The notice shall include:

6 (1) That the employer is operating under and subject to the provisions of the Missouri
7 workers' compensation law;

8 (2) That employees must report all injuries immediately to the employer by advising the
9 employer personally, the employer's designated individual or the employee's immediate boss,
10 supervisor or foreman and that the employee may lose the right to receive compensation if the
11 injury or illness is not reported within thirty days or in the case of occupational illness or disease,
12 within thirty days of the time he or she is reasonably aware of work relatedness of the injury or
13 illness; employees who fail to notify their employer within thirty days may jeopardize their
14 ability to receive compensation, and any other benefits under this chapter;

15 (3) The name, address and telephone number of the insurer, if insured. If self-insured,
16 the name, address and telephone number of the employer's designated individual responsible for
17 reporting injuries or the name, address and telephone number of the adjusting company or service
18 company designated by the employer to handle workers' compensation matters;

19 (4) The name, address and the toll-free telephone number of the division of workers'
20 compensation;

21 (5) That the employer will supply, upon request, additional information provided by the
22 division of workers' compensation;

23 (6) That a fraudulent action by the employer, employee or any other person is unlawful.

24 2. The division of workers' compensation shall develop the notice to be posted and shall
25 distribute such notice free of charge to employers and insurers upon request. **The division shall,**
26 **in a clear and conspicuous manner, include language that describes the means by which**

27 **employers and insurers may request and obtain any updated or replacement notice, and**
28 **that distribution of such notice shall be free of charge to employers and insurers upon**
29 **request. The use of any other notice that deviates in any way, in form or content, from the**
30 **official notice, shall not satisfy the requirements of this section.** Failure to request such
31 notice does not relieve the employer of its obligation to post the notice. If the employer carries
32 workers' compensation insurance, the carrier shall provide the notice to the insured within thirty
33 days of the insurance policy's inception date. **The notice developed by the division shall be**
34 **the official notice to be posted in order for employers and insurers to gain compliance**
35 **under this section. Nothing in this section shall be construed to preclude any individual**
36 **from distributing a replica of the notice described in this section, as long as the replica**
37 **contains the content described in this section and preserves the relative font size of each**
38 **statement. The division may distribute the notices electronically.**

39 3. Any employer who willfully violates the provisions of this section shall be guilty of
40 a class A misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than
41 one thousand dollars, or by imprisonment in the county jail for not more than six months or by
42 both such fine and imprisonment, and each such violation or each day such violation continues
43 shall be deemed a separate offense.

287.200. 1. Compensation for permanent total disability shall be paid during the
2 continuance of such disability for the lifetime of the employee at the weekly rate of
3 compensation in effect under this subsection on the date of the injury for which compensation
4 is being made. **The reference to the employee in this section refers only to the injured**
5 **worker and shall not include his or her dependents, estate, personal representative, or**
6 **heirs, or any person to whom compensation might otherwise be payable. The right to**
7 **compensation for permanent total disability of an injured employee shall not survive to any**
8 **person and terminates on the date of the injured employee's death in accordance with**
9 **section 287.230. Any provisions in subsection 1 of section 287.020 which are contrary to**
10 **the provisions of this section shall not apply.** The amount of such compensation shall be
11 computed as follows:

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

19 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
20 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
21 the injured employee's average weekly earnings during the year immediately preceding the
22 injury, as of the date of the injury; provided that the weekly compensation paid under this
23 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly
24 wage, as such wage is determined by the division of employment security, as of the July first
25 immediately preceding the date of injury;

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

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

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

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

49 **3. Any claim for benefits by a surviving dependent under this chapter shall be filed**
50 **within three years after the death of the qualifying employee.**

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 **and shall obtain a**
50 **determination of disability certified by a physician based upon objective medical findings.**

51 The state treasurer, with the advice and consent of the attorney general of Missouri, may enter
52 into compromise settlements as contemplated by section 287.390, or agreed statements of fact
53 that would affect the second injury fund. **However, beginning August 28, 2008, there shall**
54 **be no compromise settlements contemplated by section 287.390 paid from the second injury**
55 **fund in an amount greater than ten thousand dollars.** All awards for permanent partial
56 disability, permanent total disability, or death affecting the second injury fund shall be subject
57 to the provisions of this chapter governing review and appeal. For all claims filed against the
58 second injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys
59 general except in circumstances where an actual or potential conflict of interest exists, to provide
60 legal services as may be required in all claims made for recovery against the fund. Any legal
61 expenses incurred by the attorney general's office **solely** in the handling of such claims,
62 including, but not limited to, medical examination fees, expert witness fees, court reporter
63 expenses, travel costs, and related legal expenses shall be paid by the fund. Effective July 1,
64 1993, the payment of such legal expenses shall be contingent upon annual appropriations made
65 by the general assembly, from the fund, to the attorney general's office for this specific purpose.

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

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

71 5. If an employer fails to insure or self-insure as required in section 287.280, funds from
72 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses
73 to cure and relieve the effects of the injury or disability of an injured employee in the employ of
74 an uninsured employer, or in the case of death of an employee in the employ of an uninsured
75 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and
76 necessary expenses in the manner required in sections 287.240 and 287.241. In defense of

77 claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the
78 second injury fund, shall have the same defenses to such claims as would the uninsured employer
79 **and shall have the right to dispute the reasonableness of the medical charges or fees based**
80 **upon an audit of the medical bills. The treasurer of the state of Missouri shall be permitted**
81 **to present any evidence with respect to the audit findings on the medical charges.** Any
82 funds received by the employee or the employee's dependents, through civil or other action, must
83 go towards reimbursement of the second injury fund, for all payments made to the employee, the
84 employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant
85 to this subsection. The office of the attorney general of the state of Missouri shall bring suit in
86 the circuit court of the county in which the accident occurred against any employer not covered
87 by this chapter as required in section 287.280.

88 6. [Every three years] **Annually** the second injury fund shall have an actuarial study
89 made to determine the solvency of the fund, appropriate funding level of the fund, and forecasted
90 expenditures from the fund **and any other responsibilities of the fund resulting from any**
91 **judicial decision.** The first actuarial study shall be completed prior to [July 1, 1988] **January**
92 **1, 2009.** The expenses of such actuarial studies shall be paid out of the fund for the support of
93 the division of workers' compensation.

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

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

101 9. Any employee who at the time a compensable work-related injury is sustained is
102 employed by more than one employer, the employer for whom the employee was working when
103 the injury was sustained shall be responsible for wage loss benefits applicable only to the
104 earnings in that employer's employment and the injured employee shall be entitled to file a claim
105 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
106 from the employment or employments where the injury did not occur, up to the maximum
107 weekly benefit less those benefits paid by the employer in whose employment the employee
108 sustained the injury. The employee shall be entitled to a total benefit based on the total average
109 weekly wage of such employee computed according to subsection 8 of section 287.250. The
110 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
111 of the injury. The employer for whom the employee was working where the injury was sustained
112 shall be responsible for all medical costs incurred in regard to that injury.

113 **10. (1) Beginning August 28, 2008, claims against the second injury fund shall only**
114 **be compensated as provided for in subsections 10 to 13 of this section. Claims for disability**
115 **against the second injury fund shall be compensable where an employee has a medically**
116 **documented preexisting disability as a direct result of active military duty or as a result of**
117 **a preexisting permanent partial disability from a compensable injury as defined in section**
118 **287.020. To be compensable from the second injury fund, there shall be a medically**
119 **documented preexisting disability resulting from active military duty or a preexisting**
120 **permanent partial disability from a compensable injury as defined in section 287.020,**
121 **which equals a minimum of fifty weeks of compensation, or if a major extremity injury**
122 **only, equals a minimum of fifteen percent permanent partial disability according to the**
123 **medical standards that are used in determining such compensation, and thereafter sustains**
124 **a subsequent work-related injury that, when combined with the preexisting military**
125 **disability or preexisting permanent partial disability from a compensable injury as defined**
126 **in section 287.020, results in permanent total disability as defined in section 287.020,**
127 **compensation for such permanent total disability shall be paid as provided herein.**

128 **(2) If the preexisting permanent partial disability from a compensable injury as**
129 **defined in section 287.020 or a disability resulting from active military duty and the**
130 **subsequent work-related injury that is found to be compensable as defined in section**
131 **287.020 together result in total and permanent disability, then the employer at the time of**
132 **the subsequent work-related injury shall be liable only for the disability resulting from the**
133 **subsequent work-related injury considered alone and of itself; except that if the**
134 **compensation for which the employer at the time of the subsequent work-related injury is**
135 **liable is less than the compensation provided in this chapter for permanent total disability,**
136 **then in addition to the compensation for which the employer is liable and after the**
137 **completion of payment of the compensation by the employer, the employee shall be paid**
138 **the remainder of the compensation that would be due for the permanent total disability**
139 **under section 287.200 out of the second injury fund.**

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

147 **(4) Maintenance of the second injury fund shall be provided by section 287.710.**
148 **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. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

11. 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, who shall be entitled to defend the claim, and the employee shall submit to appropriate vocational testing and a vocational rehabilitation assessment 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.

12. 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 287.241. In defense of claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the fund, shall have the same defenses to such claims as would the uninsured employer, including the right to dispute the reasonableness of the medical charges or fees based upon an audit of the medical bills. The treasurer of the state of Missouri shall be permitted to present any evidence with respect to the audit findings on the medical charges. Any moneys received by the employee or the employee's dependents through civil or other action shall go toward reimbursement of the second injury fund for all payments made to the employee, the employee's dependents, or paid on the employee's behalf from the fund under this subsection. The office of the attorney general of the state of Missouri shall bring suit in the circuit court of the county in which the accident occurred against the employer not covered by this chapter as required in section 287.280.

13. In addition to the factors set forth in section 287.200 for the suspension of life payments to an injured employee from the fund, and notwithstanding the requirements of section 287.470, the life payments to an injured employee made from the fund shall be

185 **suspended when the employee is able to obtain gainful employment or be self-employed in**
186 **view of the nature and severity of the injury.**

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 for an injury
8 received and death ensues for any cause not resulting from the injury for which he was entitled
9 to compensation, payments of the unpaid accrued compensation shall be paid, but payments of
10 the unpaid unaccrued balance for the injury shall cease and all liability therefor shall terminate
11 [unless there are surviving dependents at the time of death].

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

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 **annual** rate of two
12 percent in lieu of all other taxes on such net deposits, net premiums or net assessments, which
13 amount of taxes shall be assessed and collected as herein provided. Beginning October 31,
14 [1993] **2008**, and every year thereafter, the director of the division of workers' compensation
15 shall [estimate the amount of revenue required to administer this chapter and the director shall]
16 determine the rate of tax to be paid in the following calendar year pursuant to this section
17 commencing with the calendar year beginning on January 1, [1994] **2009**. [If the balance of the
18 fund estimated to be on hand on December thirty-first of the year each tax rate determination is
19 made is less than one hundred ten percent of the previous year's expenses plus any additional

20 revenue required due to new statutory requirements given to the division by the general
21 assembly, then] The director [shall] **may** impose a tax not to exceed two percent in lieu of all
22 other taxes on net deposits, net premiums or net assessments, [rounded up to the nearest one-half
23 of a percentage point,] which amount of taxes shall be assessed and collected as herein provided.
24 The net premium equivalent for individual self-insured employers and any group of political
25 subdivisions of this state qualified to self-insure their liability pursuant to this chapter as
26 authorized by section 537.620, RSMo, shall be based on average rate classifications calculated
27 by the department of insurance as taken from premium rates filed by the twenty insurance
28 companies providing the greatest volume of workers' compensation insurance coverage in this
29 state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed
30 by such group of employers in accordance with subsection 2 of section 287.280 shall be the net
31 premium equivalent. Every entity required to pay the tax imposed pursuant to this section and
32 section 287.730 shall be notified by the division of workers' compensation within [ten] **thirty**
33 calendar days of the date of the determination of the rate of tax to be imposed for the following
34 year. Net premiums, net deposits or net assessments are defined as gross premiums, gross
35 deposits or gross assessments less canceled or returned premiums, premium deposits or
36 assessments and less dividends or savings, actually paid or credited.

37 [2. After January 1, 1994, the director of the division shall make one or more loans to
38 the Missouri employers mutual insurance company in an amount not to exceed an aggregate
39 amount of five million dollars from the fund maintained to administer this chapter for start-up
40 funding and initial capitalization of the company. The board of the company shall make
41 application to the director for the loans, stating the amount to be loaned to the company. The
42 loans shall be for a term of five years and, at the time the application for such loans is approved
43 by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as
44 calculated by 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.] If the March first quarterly installment made by a company or self-insurer is less than the
24 amount assessed by the director of revenue, the difference will be due on June first, but no
25 interest will accrue to the state on the difference unless the amount paid by the company or
26 self-insurer is less than eighty percent of one-fourth of the total amount of tax assessed by the
27 director of revenue for the immediately preceding taxable year.

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

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

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

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

50 6. The funds created by virtue of sections 287.220, 287.690, 287.715, and 287.730 shall
51 be exempt from the provisions of section 33.080, RSMo, specifically as they relate to the transfer
52 of fund balances and any interest thereon to the ordinary revenue, and the director of the division
53 of workers' compensation may direct the state treasurer to invest all or part of these funds in
54 interest-bearing accounts as provided in article IV, section 15 of the Constitution of the state of
55 Missouri, and any unexpended balance in the second injury fund at the end of any appropriation
56 period shall be a credit in the second injury fund and shall be the amount of the fund at the
57 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] **2008**, and each year thereafter, the director of the
12 division of workers' compensation shall [estimate the amount of benefits payable from the
13 second injury fund during the following calendar year and shall] calculate the total amount of the
14 annual surcharge to be imposed during the following calendar year upon all workers'
15 compensation policyholders and authorized self-insurers. The amount of the annual surcharge
16 percentage to be imposed upon each policyholder and self-insured for the following calendar year
17 commencing with the calendar year beginning on January 1, 2006, shall be set at and calculated
18 against 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 year].
23 All [policyholders] **insurance carriers** and self-insurers shall be notified by the division of
24 workers' compensation within [ten] **thirty** calendar days of the determination of the surcharge
25 percent to be imposed for, and paid in, the following calendar year. The net premium equivalent
26 for individual self-insured employers and any group of political subdivisions of this state

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

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

43 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
44 insurers shall pay the amounts not later than the thirtieth day of the month following the end of
45 the quarter in which the amount is received from policyholders. **Payments required under this**
46 **section shall be deemed made the earlier of either the date postmarked by the United States**
47 **Post Office on the envelope or container in which such paper is received or the date**
48 **certified by a commercial delivery service as the date its customer deposited for delivery,**
49 **charges paid, the envelope or container in which such paper is received.** If the director of
50 the division of workers' compensation fails to calculate the surcharge by the thirty-first day of
51 October of any year for the following year, any increase in the surcharge ultimately set by the
52 director shall not be effective for any calendar quarter beginning less than sixty days from the
53 date the director makes such determination.

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

287.745. 1. If the tax imposed by sections 287.690[,] and 287.710[,] and **the surcharge**
2 **imposed by section 287.715** are not paid when due, the [taxpayer] **payer** shall be required to
3 pay, as part of such tax **or surcharge**, interest thereon at the rate of one [and one-half] percent

4 per month for each month [or fraction thereof] delinquent **prorated from the date payment is**
5 **made.** [In the event the state prevails in any dispute concerning an assessment of tax which has
6 not been paid by the taxpayer, interest shall be paid upon the amount found due to the state at
7 the rate of one and one-half percent per month for each month or fraction thereof delinquent.]

8 2. In any legal contest concerning the amount of tax under sections 287.690[,] **and**
9 287.710 and **the surcharge under section 287.715** for a calendar year, the quarterly installments
10 for the following year shall continue to be made based upon the amount assessed [by the director
11 of revenue] for the year in question. [If after the end of any taxable year, the amount of the actual
12 tax due is less than the total amount of the installments actually paid, the amount by which the
13 amount paid exceeds the amount due shall be credited against the tax for the following year and
14 deducted from the quarterly installment otherwise due on June first.] **If after the end of any**
15 **calendar year after all audit adjustments have been made, the amount of the actual tax or**
16 **surcharge due is less than the total amount of the installments actually paid, upon**
17 **application of the insurer or self-insurer, the director of revenue, in the case of the tax**
18 **imposed under sections 287.690 and 287.710 or the director of the division of workers'**
19 **compensation, in the case of the surcharge imposed under section 287.715, may refund the**
20 **amount of overpayment if no other obligation is owed to the state or to the division of**
21 **workers' compensation.**

288.130. 1. Each employing unit shall keep true and accurate payroll and other related
2 records, containing such information as the division may by regulation prescribe for a period of
3 at least three calendar years after the record was made. Such records shall be open to inspection
4 and be subject to being copied by authorized representatives of the division at any reasonable
5 time and as often as may be necessary. Any authorized person engaged in administering this law
6 may require from any employing unit any sworn or unsworn reports, with respect to individuals
7 performing services for it, which are deemed necessary for the effective administration of this
8 law.

9 2. All employers required to report W-2 copy A information on magnetic media tape to
10 the Social Security Administration pursuant to 26 CFR Section 301.6011-2, or successor
11 regulations, are likewise required to report quarterly wage information due pursuant to section
12 288.090 to the division on magnetic tape or diskette in a format prescribed by the division.

13 3. Each employer shall post and maintain in places readily accessible to the employer's
14 workers printed statements concerning benefit rights, claims for benefits and such other matters
15 related to the administration of this law as the division may by regulation prescribe. **The printed**
16 **statement as described in 8 CSR 10-3.070, as amended, shall, in a clear and conspicuous**
17 **manner, include language that describes the means by which employers and insurers may**
18 **request and obtain any updated or replacement statement, and that distribution of such**

19 **statement shall be free of charge to employers and insurers upon request.** Each employer
20 shall supply to workers copies of any printed statements relating to claims for benefits when and
21 as the division may by regulation prescribe. Such printed statements and other materials shall
22 be supplied by the division without cost. **The printed statement developed by the division**
23 **under 8 CSR 10-3.070, as amended, shall be the official printed statement to be posted in**
24 **order for employers and insurers to gain compliance under this section. The use of any**
25 **other printed statement that deviates in any way, in form or content, from the official**
26 **printed statement, shall not satisfy the requirements of this section. Nothing in this section**
27 **shall be construed to preclude any individual from distributing a replica of the statement**
28 **described in this section, as long as the replica contains the content described in this section**
29 **and preserves the relative font size of each statement. The division may distribute the**
30 **statements electronically.**

31 4. A deputy shall make an ex parte determination after investigation but without hearing
32 with respect to any matter pertaining to the liability of an employing unit which does not involve
33 a claimant. The deputy shall promptly notify any interested employing units of each such
34 determination and the reason for it. The division shall grant a hearing before an appeals tribunal
35 to any employing unit appealing from any such ex parte determination provided an appeal is filed
36 in writing within thirty days following the date of notification or the mailing of such
37 determination to the party's last known address. In the absence of an appeal any such
38 determination shall become final at the expiration of a thirty-day period. The deputy may,
39 however, at any time within a year from the date of the deputy's determination, for good cause,
40 reconsider the determination and shall promptly notify all interested employing units of his
41 amended determination and the reason for it.

42 5. The thirty-day period provided in subsection 4 of this section may, for good cause, be
43 extended.

290.594. 1. As used in this section, the following terms shall mean:

2 **(1) "Employer", includes the state or any political or civil subdivision thereof or**
3 **any person, partnership, association, or corporation employing six or more persons within**
4 **the state, but does not include individual persons;**

5 **(2) "Proper authorities", public authorities or authorities of the employer,**
6 **excluding any individual who engaged in the reported illegal conduct.**

7 **2. Employees who are not employed under a contract containing a statement of**
8 **duration shall be employed at-will and may be discharged at any time, with or without**
9 **cause, subject to contrary statutory provisions and the exceptions provided in subsections**
10 **3 and 4 of this section. Any cause of action for whistle blowing or refusal to commit an**
11 **illegal act that previously existed in common law is hereby abrogated.**

12 **3. Employees shall not be deemed employed at-will and shall not be subject to**
13 **discharge when the elements of a whistle-blower cause of action for wrongful discharge are**
14 **established. A whistle-blower cause of action for wrongful discharge is established if an**
15 **employee proves by a preponderance of the evidence that:**

16 **(1) The employee, under a good faith reasonable belief, reported to proper**
17 **authorities serious misconduct had occurred or would occur that constitutes an actual**
18 **violation of a statute, constitutional provision, or regulation;**

19 **(2) The employee was discharged; and**

20 **(3) The discharge was caused by the employee's report to the proper authorities.**

21 **4. Employees shall not be deemed employed at-will and shall not be subject to**
22 **discharge when the elements of a refusal to commit an illegal act cause of action for**
23 **wrongful discharge are established. A refusal to commit an illegal act cause of action for**
24 **wrongful discharge is established if an employee proves by a preponderance of the**
25 **evidence that:**

26 **(1) The employer directed the employee to perform conduct that employee had a**
27 **good faith and reasonable belief that, if completed, would violate a statute, constitutional**
28 **provision, or regulation;**

29 **(2) The employee specifically refused the directive to perform the unlawful act;**

30 **(3) The employee was discharged; and**

31 **(4) The discharge was caused by the employee's refusal to perform the unlawful**
32 **act.**

33 **5. No cause of action shall exist under subsection 3 or 4 of this section if the**
34 **employee has available an alternative state or federal statutory or regulatory remedy.**

Section B. Because of the need to clarify workers' compensation laws and preserve the
2 solvency of the workers' compensation system, the repeal and reenactment of sections 287.020,
3 287.127, 287.200, 287.220, 287.230, 287.690, 287.710, 287.715, and 287.745 of section A of
4 this act is deemed necessary for the immediate preservation of the public health, welfare, peace
5 and safety, and the repeal and reenactment of sections 287.020, 287.127, 287.200, 287.220,
6 287.230, 287.690, 287.710, 287.715, and 287.745 are hereby declared to be an emergency act
7 within the meaning of the constitution, and the repeal and reenactment of sections 287.020,
8 287.127, 287.200, 287.220, 287.230, 287.690, 287.710, 287.715, and 287.745 of section A of
9 this act shall be in full force and effect upon its passage and approval.

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