

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2059
95TH GENERAL ASSEMBLY

4750L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.140, 287.143, 287.149, 287.210, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof eight new sections relating to workers' compensation law, with a penalty provision.

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

Section A. Sections 287.140, 287.143, 287.149, 287.210, 287.220, 287.690, and 287.715, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 287.140, 287.143, 287.149, 287.210, 287.220, 287.690, 287.715, and 287.890, to read as follows:

287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620, RSMo. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer

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.

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

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

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

41 4. The division shall, by regulation, establish methods to resolve disputes concerning the
42 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
43 disputes between employers and medical providers over fees charged, whether or not paid, and
44 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
45 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
46 jeopardized because of such dispute.

47 5. No compensation shall be payable for the death or disability of an employee, if and
48 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
49 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
50 opinion of the division or the commission, inconsiderable in view of the seriousness of the

51 injury. If the employee dies as a result of an operation made necessary by the injury, the death
52 shall be deemed to be caused by the injury.

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

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

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

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

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

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

85 (1) The patient;

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

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

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

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

91 13. (1) No hospital, physician or other health care provider, other than a hospital,
92 physician or health care provider selected by the employee at his own expense pursuant to
93 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
94 services rendered to an employee due to a work-related injury or report to any credit reporting
95 agency any failure of the employee to make such payment, when an injury covered by this
96 chapter has occurred and such hospital, physician or health care provider has received actual
97 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
98 shall be deemed received by the hospital, physician or health care provider five days after
99 mailing by certified mail by the employer or insurer to the hospital, physician or health care
100 provider.

101 (2) The notice shall include:

102 (a) The name of the employer;

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

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

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

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

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

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

120 (5) If an employer or insurer fails to make payment for authorized services provided to
121 the employee by a hospital, physician or other health care provider pursuant to this chapter, the

122 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
123 section with a dispute against the employer or insurer for any fees or other charges for services
124 provided.

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

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

287.143. As a guide to the interpretation and application of sections 287.144 to 287.149,
2 sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational
3 rehabilitation to a severely injured employee. An employee shall submit to appropriate
4 vocational testing and a vocational rehabilitation assessment scheduled by an employer or its
5 insurer **or the second injury fund**.

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

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

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

287.210. 1. After an employee has received an injury he shall from time to time
2 thereafter during disability submit to reasonable medical examination at the request of the
3 employer, [his] **the employer's** insurer, the commission, the division or an administrative law
4 judge, **or the second injury fund**, the time and place of which shall be fixed with due regard
5 to the convenience of the employee and his physical condition and ability to attend. The
6 employee may have his own physician present, and if the employee refuses to submit to the

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

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

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

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

36 5. As used in this chapter the terms "physician's report" and "medical report" mean the
37 report of any physician made on any printed form authorized by the division or the commission
38 or any complete medical report. As used in this chapter the term "complete medical report"
39 means the report of a physician giving the physician's qualifications and the patient's history,
40 complaints, details of the findings of any and all laboratory, X-ray and all other technical
41 examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage

42 of permanent partial disability, if any. An element or elements of a complete medical report may
43 be met by the physician's records.

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

49 7. The testimony of a treating or examining physician may be submitted in evidence on
50 the issues in controversy by a complete medical report and shall be admissible without other
51 foundational evidence subject to compliance with the following procedures. The party intending
52 to submit a complete medical report in evidence shall give notice at least sixty days prior to the
53 hearing to all parties and shall provide reasonable opportunity to all parties to obtain
54 cross-examination testimony of the physician by deposition. The notice shall include a copy of
55 the report and all the clinical and treatment records of the physician including copies of all
56 records and reports received by the physician from other health care providers. The party
57 offering the report must make the physician available for cross-examination testimony by
58 deposition not later than seven days before the matter is set for hearing, and each cross-examiner
59 shall compensate the physician for the portion of testimony obtained in an amount not to exceed
60 a rate of reasonable compensation taking into consideration the specialty practiced by the
61 physician. Cross-examination testimony shall not bind the cross-examining party. Any
62 testimony obtained by the offering party shall be at that party's expense on a proportional basis,
63 including the deposition fee of the physician. Upon request of any party, the party offering a
64 complete medical report in evidence must also make available copies of X rays or other
65 diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of
66 such notice a party shall dispute whether a report meets the requirements of a complete medical
67 report by providing written objections to the offering party stating the grounds for the dispute,
68 and at the request of any party, the administrative law judge shall rule upon such objections upon
69 pretrial hearing whether the report meets the requirements of a complete medical report and upon
70 the admissibility of the report or portions thereof. If no objections are filed the report is
71 admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the
72 parties from agreeing to admit medical reports or records by consent. [The provisions of this
73 subsection shall not apply to claims against the second injury fund.]

74 8. Certified copies of the proceedings before any coroner holding an inquest over the
75 body of any employee receiving an injury in the course of his employment resulting in death shall
76 be admissible in evidence in any proceedings for compensation under this chapter, and it shall

77 be the duty of the coroner to give notice of the inquest to the employer and the dependents of the
78 deceased employee, who shall have the right to cross-examine the witness.

79 9. The division or the commission may in its discretion in extraordinary cases order a
80 postmortem examination and for that purpose may also order a body exhumed.

287.220. 1. **No claim for permanent partial disability due to an injury occurring
2 on or after August 28, 2010, shall be made against the second injury fund established under
3 this section.**

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

33 compensation for which the employer at the time of the last injury is liable is less than the
34 compensation provided in this chapter for permanent total disability, then in addition to the
35 compensation for which the employer is liable and after the completion of payment of the
36 compensation by the employer, the employee shall be paid the remainder of the compensation
37 that would be due for permanent total disability under section 287.200 out of a special fund
38 known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section
39 provided and for special weekly benefits in rehabilitation cases as provided in section 287.141.
40 Maintenance of the second injury fund shall be as provided by section 287.710. The state
41 treasurer shall be the custodian of the second injury fund which shall be deposited the same as
42 are state funds and any interest accruing thereon shall be added thereto. The fund shall be
43 subject to audit the same as state funds and accounts and shall be protected by the general bond
44 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.] 3. In all cases in which a recovery against the second injury fund is sought [for
48 permanent partial disability, permanent total disability, or death], the state treasurer as custodian
49 thereof shall be named as a party, and shall be entitled to defend against the claim. The state
50 treasurer, with the advice and consent of the attorney general of Missouri, may enter into
51 compromise settlements as contemplated by section 287.390, or agreed statements of fact that
52 would affect the second injury fund. **However, beginning August 28, 2010, there shall be no**
53 **compromise settlements contemplated by section 287.390 paid from the second injury fund**
54 **in an amount greater than sixty thousand dollars.** All awards [for permanent partial
55 disability, permanent total disability, or death] **issued under this chapter** affecting the second
56 injury fund shall be subject to the provisions of this chapter governing review and appeal. For
57 all claims filed against the second injury fund on or after July 1, 1994, the attorney general shall
58 use assistant attorneys general except in circumstances where an actual or potential conflict of
59 interest exists, to provide legal services as may be required in all claims made for recovery
60 against the fund. Any legal expenses incurred by the attorney general's office in the handling of
61 such claims, including, but not limited to, medical examination fees **incurred under sections**
62 **287.210 and the expenses provided for under section 287.140**, expert witness fees, court
63 reporter expenses, travel costs, and related legal expenses shall be paid by the fund. Effective
64 July 1, 1993, the payment of such legal expenses shall be contingent upon annual appropriations
65 made by the general assembly, from the fund, to the attorney general's office for this specific
66 purpose.

67 [3.] 4. If more than one injury in the same employment causes concurrent temporary
68 disabilities, compensation shall be payable only for the longest and largest paying disability.

69 [4.] **5.** If more than one injury in the same employment causes concurrent and
70 consecutive permanent partial disability, compensation payments for each subsequent disability
71 shall not begin until the end of the compensation period of the prior disability.

72 [5.] **6.** If an employer fails to insure or self-insure as required in section 287.280, funds
73 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
74 expenses to cure and relieve the effects of the injury or disability of an injured employee in the
75 employ of an uninsured employer **consistent with subsection 3 of section 287.140**, or in the
76 case of death of an employee in the employ of an uninsured employer, funds from the second
77 injury fund may be withdrawn to cover fair, reasonable, and necessary expenses in the manner
78 required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the
79 treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same
80 defenses to such claims as would the uninsured employer. Any funds received by the employee
81 or the employee's dependents, through civil or other action, must go towards reimbursement of
82 the second injury fund, for all payments made to the employee, the employee's dependents, or
83 paid on the employee's behalf, from the second injury fund pursuant to this subsection. The
84 office of the attorney general of the state of Missouri shall bring suit in the circuit court of the
85 county in which the accident occurred against any employer not covered by this chapter as
86 required in section 287.280.

87 [6.] **7.** Every three years the second injury fund shall have an actuarial study made to
88 determine the solvency of the fund, appropriate funding level of the fund, and forecasted
89 expenditures from the fund. The first actuarial study shall be completed prior to [July 1, 1988]
90 **July 1, 2011**. The expenses of such actuarial studies shall be paid out of the fund for the support
91 of the division of workers' compensation.

92 [7.] **8.** The director of the division of workers' compensation shall maintain the financial
93 data and records concerning the fund for the support of the division of workers' compensation
94 and the second injury fund. The division shall also compile and report data on claims made
95 pursuant to subsection [9] **10** of this section. The attorney general shall provide all necessary
96 information to the division for this purpose.

97 [8.] **9.** All claims for fees and expenses filed against the second injury fund and all
98 records pertaining thereto shall be open to the public.

99 [9.] **10.** Any employee who at the time a compensable work-related injury is sustained
100 is employed by more than one employer, the employer for whom the employee was working
101 when the injury was sustained shall be responsible for wage loss benefits applicable only to the
102 earnings in that employer's employment and the injured employee shall be entitled to file a claim
103 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
104 from the employment or employments where the injury did not occur, up to the maximum

105 weekly benefit less those benefits paid by the employer in whose employment the employee
106 sustained the injury. The employee shall be entitled to a total benefit based on the total average
107 weekly wage of such employee computed according to subsection 8 of section 287.250. The
108 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
109 of the injury. The employer for whom the employee was working where the injury was sustained
110 shall be responsible for all medical costs incurred in regard to that injury.

287.690. [1. Prior to December 31, 1993,] **Beginning January 1, 2011**, for the purpose
2 of providing for the expense of administering this chapter [and for the purpose set out in
3 subsection 2 of this section], every person, partnership, association, corporation, whether
4 organized under the laws of this or any other state or country, the state of Missouri, including any
5 of its departments, divisions, agencies, commissions, and boards or any political subdivisions
6 of the state who self-insure or hold themselves out to be any part self-insured, company, mutual
7 company, the parties to any interindemnity contract, or other plan or scheme, and every other
8 insurance carrier, insuring employers in this state against liability for personal injuries to their
9 employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter,
10 tax upon the net deposits, net premiums or net assessments received, whether in cash or notes
11 in this state, or on account of business done in this state, for such insurance in this state at the
12 rate of two percent in lieu of all [other] **premium** taxes on such net deposits, net premiums or
13 net assessments, which amount of taxes shall be assessed and collected as herein provided.
14 **Beginning October 31, [1993] 2010**, and every year thereafter, the director of the division of
15 workers' compensation shall estimate the amount of revenue required to administer this chapter
16 and the **division** director shall determine the rate of tax to be paid in the following calendar year
17 pursuant to this section commencing with the calendar year beginning on January 1, [1994] **2011**.
18 If the balance of the fund [estimated to be] on hand on [December thirty-first] **July first** of the
19 year each tax rate determination is made **on October thirty-first** is less than one hundred ten
20 percent of the previous year's expenses plus any additional revenue required due to new statutory
21 requirements given to the division by the general assembly, then the **division** director shall
22 impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums
23 or net assessments, rounded up to the nearest one-half of a percentage point, which amount of
24 taxes shall be assessed and collected as herein provided. The net premium equivalent for
25 individual self-insured employers and any group of political subdivisions of this state qualified
26 to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo,
27 shall be based on average rate classifications calculated by the department of insurance, financial
28 institutions and professional registration as taken from premium rates filed by the twenty
29 insurance companies providing the greatest volume of workers' compensation insurance coverage
30 in this state. For employers qualified to self-insure their liability pursuant to this chapter, the

31 rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall
32 be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this
33 section and section 287.730 shall be notified by the division of workers' compensation within
34 ten calendar days of the date of the determination of the rate of tax to be imposed for the
35 following year. Net premiums, net deposits or net assessments are defined as gross premiums,
36 gross deposits or gross assessments less canceled or returned premiums, premium deposits or
37 assessments and less dividends or savings, actually paid or credited.

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

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

11 2. Beginning October 31, [2005] **2010**, and each year thereafter, the director of the
12 division of workers' compensation shall estimate the amount of benefits payable from the second
13 injury fund during the following calendar year and shall calculate the total amount of the annual
14 surcharge to be imposed during the following calendar year upon all workers' compensation
15 policyholders and authorized self-insurers. The amount of the annual surcharge percentage to
16 be imposed upon each policyholder and self-insured for the following calendar year commencing
17 with the calendar year beginning on January 1, [2006] **2011**, shall be set at and calculated against
18 a percentage, not to exceed three percent, of the policyholder's or self-insured's workers'
19 compensation net deposits, net premiums, or net assessments for the previous policy year,
20 rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible,
21 one hundred ten percent of the moneys to be paid from the second injury fund in the following

22 calendar year, less any moneys contained in the fund at the end of the previous [calendar] **fiscal**
23 year. All policyholders and self-insurers shall be notified by the division of workers'
24 compensation within ten calendar days of the determination of the surcharge percent to be
25 imposed for, and paid in, the following calendar year. The net premium equivalent for individual
26 self-insured employers and any group of political subdivisions of this state qualified to
27 self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall
28 be based on average rate classifications calculated by the department of insurance, financial
29 institutions and professional registration as taken from premium rates filed by the twenty
30 insurance companies providing the greatest volume of workers' compensation insurance coverage
31 in this state. For employers qualified to self-insure their liability pursuant to this chapter, the
32 rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall
33 be the net premium equivalent. The **division** director may advance [funds] **moneys** from the
34 workers' compensation fund to the second injury fund if surcharge collections prove to be
35 insufficient. **The outstanding total of moneys advanced by the division director from the**
36 **workers' compensation fund to the second injury fund shall not exceed thirty-three and**
37 **one-third percent of the total amount of the annual surcharge as calculated in this section**
38 **to be imposed in the year moneys are advanced to the second injury fund. No additional**
39 **advance from the workers' compensation fund to the second injury fund shall be made by**
40 **the director until the previous advance has been reimbursed in full.** Any [funds] **moneys**
41 advanced from the workers' compensation fund to the second injury fund [must] **shall** be
42 reimbursed by the second injury fund no later than December thirty-first of the **fifth** year
43 following the advance. The surcharge shall be collected from policyholders by each insurer at
44 the same time and in the same manner that the premium is collected, but no insurer or its agent
45 shall be entitled to any portion of the surcharge as a fee or commission for its collection. The
46 surcharge is not subject to any taxes, licenses or fees.

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

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

56 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer
57 fails to make timely transfer to the division of surcharges actually collected from policyholders,

58 as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or
59 untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties
60 assessed under this subsection shall be collected in a civil action by a summary proceeding
61 brought by the director of the division of workers' compensation.

62 **6. Funds collected under the provisions of this section shall be the sole funding**
63 **source of the second injury fund.**

287.890. 1. The governor may by executive order enforce the provisions of this
2 **section regarding the Missouri state workers' compensation council.**

3 **2. There is hereby created a "Missouri State Workers' Compensation Council".**
4 **The council shall consist of nine appointed voting members and two appointed nonvoting**
5 **members. All appointees shall be persons whose training and experience qualify them to**
6 **deal with the difficult problems of workers' compensation, particularly legal, accounting,**
7 **actuarial, economic, and social aspects of workers' compensation.**

8 **(1) Three voting members shall be appointed to the council by the governor. One**
9 **voting member shall be appointed on account of his or her vocation, employment, or**
10 **affiliations being classed as representative of employers. One voting member shall be**
11 **appointed on account of his or her vocation, employment, or affiliations being classed as**
12 **representative of employees. One voting member shall be appointed to represent the public**
13 **interest separate from employee or employer representation.**

14 **(2) Three voting members and one nonvoting member shall be appointed to the**
15 **council by the speaker of the house of representatives. One voting member shall be**
16 **appointed on account of his or her vocation, employment, or affiliations being classed as**
17 **representative of employers that employ twenty or less employees. One voting member**
18 **shall be appointed on account of his or her vocation, employment, or affiliations being**
19 **classed as representative of employees. One voting member shall be appointed to represent**
20 **the public interest separate from employee or employer representation. One nonvoting**
21 **member shall be appointed from the house of representatives.**

22 **(3) Three voting members and one nonvoting member shall be appointed to the**
23 **council by the president pro tem of the senate. One voting member shall be appointed on**
24 **account of his or her vocation, employment, or affiliations being classed as representative**
25 **of employers. One voting member shall be appointed on account of his or her vocation,**
26 **employment, or affiliations being classed as representative of employees. One voting**
27 **member shall be appointed to represent the public interest separate from employee or**
28 **employer representation. One nonvoting member shall be appointed from the senate.**

29 **3. The council shall organize itself and select a chairperson or cochairpersons and**
30 **other officers from the nine voting members. Six voting members shall constitute a**

31 quorum and the council shall act only upon the affirmative vote of at least five of the voting
32 members. The council shall meet no less than four times yearly. Members of the council
33 shall serve without compensation, but are to be reimbursed the amount of actual expenses.
34 Actual expenses shall be paid from the workers' compensation fund under section 287.710.

35 4. The division shall provide professional and clerical assistance as needed for
36 regularly scheduled meetings.

37 5. Each nonvoting member shall serve for a term of four years or until he or she is
38 no longer a member of the general assembly whichever occurs first. A nonvoting member's
39 term shall be a maximum of four years. Each voting member shall serve for a term of
40 three years. For the initial appointment, the governor-appointed employer representative,
41 the speaker of the house-appointed employee representative, and the president pro tem of
42 the senate-appointed public interest representative shall serve an initial term of one year.
43 For the initial appointment, the governor-appointed employee representative, the speaker
44 of the house-appointed public interest representative, and the president pro tem of the
45 senate-appointed employer representative shall serve an initial term of two years. At the
46 end of a voting member's term he or she may be reappointed.

47 6. The council shall advise the division in carrying out the purposes of this chapter.
48 The council shall submit annually by January fifteenth to the governor and the general
49 assembly its recommendations regarding amendments to this chapter, the status of
50 workers' compensation insurance, the projected maintenance of the solvency of the second
51 injury fund, and the adequacy of the workers' compensation law.

52 7. The council shall present to the division every proposal of the council for changes
53 in this chapter and shall seek the division's concurrence with the proposal. The division
54 shall give careful consideration to every proposal submitted by the council for legislative
55 or administrative action and shall review each legislative proposal for possible
56 incorporation into department of labor and industrial relations' recommendations.

57 8. The council shall have access to only the records of the division that are
58 necessary for the administration of this chapter and to the reasonable services of the
59 employees of the division. It may request the director or any of the employees appointed
60 by the director or any employee subject to this chapter to appear before it and to testify
61 relative to the functioning of this chapter and to other relevant matters. The council may
62 conduct research of its own, make and publish reports, and recommend to the division
63 needed changes in this chapter or in the rules of the division as it considers necessary.

64 9. The council, unless prohibited by a concurrent resolution of the general
65 assembly, shall be authorized to commission an outside study of the solvency, adequacy,
66 and staffing and operational efficiency of the Missouri workers' compensation system. The

67 study shall be conducted every five years, the first being conducted in fiscal year 2011. The
68 study shall be funded subject to appropriation from the workers' compensation fund under
69 section 287.710.

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