SECOND REGULAR SESSION

HOUSE BILL NO. 1403

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHATZ (Sponsor), JONES (89), HOUGH, HAMPTON, FISHER, HOUGHTON, DAVIS, BRATTIN, HINSON, CRAWFORD, SHUMAKE, ASBURY, FITZWATER, CAUTHORN, SCHARNHORST, MOLENDORP, ALLEN, BERNSKOETTER, KORMAN, POLLOCK, WELLS, FRANKLIN, REDMON, DIEHL, GOSEN, KELLEY (126), HOSKINS, LARGENT, JOHNSON, ENTLICHER, BROWN (85), LANT, REIBOLDT, FRAKER, SOMMER, HAEFNER, LASATER, CONWAY (14), LAIR, STREAM, GRISAMORE, PHILLIPS, WRIGHT AND McNARY (Co-sponsors).

5100L.02I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.120, 287.140, 287.141, 287.143, 287.149, 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof eleven new sections relating to workers' compensation, with an emergency clause for certain sections.

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

Section A. Sections 287.120, 287.140, 287.141, 287.143, 287.149, 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 287.120, 287.140, 287.141, 287.143, 287.149, 287.160, 287.165, 287.210, 287.220, 287.690, and 287.715, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident **or occupational disease** arising out of and in the course of the employee's employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. **Every employee subject to the provisions of this chapter shall be released from all liability therefor whatsoever for any personal injury or death caused to a coemployee due to an accident or occupational disease arising out of and in the course of the employee's employment.** The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

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.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such **[**accidental**]** injury or death **by accident or occupational disease**, except such rights and remedies as are not provided for by this chapter.

3. No compensation shall be allowed under this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

4. Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.

5. Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a reasonable effort to cause his or her employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs.

(2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited.

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption. An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

7. Where the employee's participation in a recreational activity or program is the prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:

(1) The employee was directly ordered by the employer to participate in such recreational activity or program;

(2) The employee was paid wages or travel expenses while participating in such recreational activity or program; or

(3) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

11. If an employee who is receiving compensation under this chapter becomes incarcerated, such compensation shall be suspended for the duration of the incarceration.

12. To be eligible to receive compensation under this chapter, an employee must be entitled to legally work in the United States.

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

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

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

4. The division shall, by regulation, establish methods to resolve disputes concerning the reasonableness of medical charges, services, or aids.

This regulation shall govern resolution of disputes between employers and medical providers over fees charged, whether or not paid, and shall be in lieu of any other administrative procedure under this chapter. The employee shall not be a party to a dispute over medical charges, nor shall the employee's recovery in any way be jeopardized because of such dispute.

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

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

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

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

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

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

11. Any physician or other health care provider who orders, directs or refers a patient for treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the time of the referral, disclose in writing if such health care provider, any of his partners or his

employer has a financial interest in the institution or facility to which the patient is being referred, to the following:

(1) The patient;

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

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

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

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

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

(2) The notice shall include:

(a) The name of the employer;

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

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

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

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

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

(4) If a hospital, physician or other health care provider or a debt collector on behalf of such hospital, physician or other health care provider pursues any action to collect from an employee after such notice is properly given, the employee shall have a cause of action against

the hospital, physician or other health care provider for actual damages sustained plus up to one thousand dollars in additional damages, costs and reasonable attorney's fees.

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

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

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

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

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and physical restoration services. No facility or institution shall be considered as qualified unless it is equipped to provide physical rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of industrial injury, and unless such facility or institution is operated under the supervision of a physician qualified to

render physical rehabilitation service and is staffed with trained and qualified personnel and has received a certificate of qualification from the division of workers' compensation. No physician shall be considered as qualified unless he has had the experience prescribed by the division.

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

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

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

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

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

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

287.143. As a guide to the interpretation and application of sections 287.144 to 287.149, sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational rehabilitation to a severely injured employee. An employee shall submit to appropriate vocational testing and a vocational rehabilitation assessment scheduled by an employer **[**or**] ,** its insurer**, or the attorney general on behalf of the second injury fund if the employer has not obtained a vocational rehabilitation assessment**.

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

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

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

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

2. Compensation shall be payable as the wages were paid prior to the injury, but in any event at least once every two weeks. If an injured employee claims benefits pursuant to this section, an employer may, if the employee agrees in writing, pay directly to the employee any benefits due pursuant to section 287.170. The employer shall continue such payments until the insurer starts making the payments or the claim is contested by any party. Where the claim is found to be compensable the employer's workers' compensation insurer shall indemnify the

employer for any payments made pursuant to this subsection. If the employee's claim is found to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer, or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

(1) Lump sum payment;

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

(3) Payroll deduction; or

(4) Secured installment plan. If the employee is no longer employed by such employer, the employer may garnish the employee's wages or execute upon any property, except real estate, of the employee. Nothing in this subsection shall be construed to require any employer to make payments directly to the employee.

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

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

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

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

287.210. 1. After an employee has received an injury he shall from time to time thereafter during disability submit to reasonable medical examination at the request of the employer, **[**his**] the employer's** insurer, the commission, the division **[**or**] ,** an administrative law

judge, **or the attorney general on behalf of the second injury fund if the employer has not obtained a medical examination report,** the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee may have his own physician present, and if the employee refuses to submit to the examination, or in any way obstructs it, his right to compensation shall be forfeited during such period unless in the opinion of the commission the circumstances justify the refusal or obstruction.

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

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

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

5. As used in this chapter the terms "physician's report" and "medical report" mean the report of any physician made on any printed form authorized by the division or the commission or any complete medical report. As used in this chapter the term "complete medical report"

means the report of a physician giving the physician's qualifications and the patient's history, complaints, details of the findings of any and all laboratory, X-ray and all other technical examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage of permanent partial disability, if any. An element or elements of a complete medical report may be met by the physician's records.

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

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

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

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

287.220. 1. **There is hereby created in the state treasury a special fund to be known as the "Second Injury Fund" created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund 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.**

2. All claims against the second injury fund for injuries occurring prior to the effective date of this section shall be compensated as provided in this subsection. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had

there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of **[**a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund 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.

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

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

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

(a) An employee has a medically documented preexisting permanent partial disability as a direct result of active military duty in any branch of the United States armed

forces or as a result of a preexisting permanent partial disability from a compensable injury as defined in section 287.020;

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

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

(2) When an employee is entitled to compensation as provided in this subsection, the employer at the time of the last work-related injury shall only be liable for the disability resulting from the subsequent work-related injury considered alone and of itself.

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

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

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

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

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

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

(3) The state treasurer, with the advice and consent of the attorney general and with the express authorization of a majority of the second injury fund commission, may enter into compromise settlements with dependents of claimants, whether finally

adjudicated or not, arising from the Missouri supreme court's decision in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).

(4) For all claims filed against the second injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where an actual or potential conflict of interest exists, to provide legal services as may be required in all claims made for recovery against the fund. Any legal expenses incurred by the attorney general's office in the handling of such claims, including, but not limited to, medical examination fees **incurred under sections 287.210 and the expenses provided for under section 287.140**, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be contingent upon annual appropriations made by the general assembly, from the fund, to the attorney general's office for this specific purpose.

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

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

[5.**]** **7.** 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 **incurred relating to claims for injuries occurring prior to the effective date of this section,** to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer **consistent with subsection 3 of section 287.140**, 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 **incurred relating to a death occurring prior to the effective date of this section,** 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 second injury fund, shall have the same defenses to such claims as would the uninsured employer. Any funds received by the employee or the employee's dependents, through civil or other action, must go towards 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 second injury fund pursuant to 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 any employer not covered by this chapter as required in section 287.280.

[6.**]** **8.** Every **[**three years**]** **year** the second injury fund shall have an actuarial study made to determine the solvency of the fund **taking into consideration any existing balance**

carried forward from a previous year, appropriate funding level of the fund, and forecasted expenditures from the fund. The first actuarial study shall be completed prior to July 1, **[**1988**]** **2013**. The expenses of such actuarial studies shall be paid out of the fund for the support of the division of workers' compensation.

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

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

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

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

13. Notwithstanding the requirements of section 287.470, the life payments to an injured employee made from the fund shall be suspended when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. The division shall promulgate rules setting forth a reasonable standard means test to determine if such employment warrants the suspension of benefits.

14. Notwithstanding the requirements of section 287.470, the director may suspend, in whole or in part, the life payments to an injured employee made from the fund when the employee becomes eligible to receive Social Security benefits. In no case shall the sum of the amount of monthly payments from the fund and the monthly Social Security benefits

attributable to the employee's injury, be less than the monthly life payments from the fund the employee has been receiving.

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

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

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

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

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

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

(5) Interest on unpaid awards.

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

287.690. **[**1.**]** Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter **[**and for the purpose set out in subsection 2 of this section**]**, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in this state at the rate of two percent in lieu of all **[**other**]** **premium** taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the **division** director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, 1994. If the balance of the fund **[**estimated to be**]** on hand on **[**December thirty-first**]** **July first** of the year each tax rate determination is made **on October thirty-first** is less than one hundred ten percent of the previous year's expenses plus any additional revenue required due to new statutory requirements

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

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

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

2. Beginning October 31, 2005, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the following calendar year and shall calculate the total amount of the annual surcharge to be imposed during the following calendar year upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the following calendar year commencing with the calendar year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys to be paid from the second injury fund in the following calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders. If the director of the division of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any year for the following year, any increase in the surcharge ultimately set by the director shall not

be effective for any calendar quarter beginning less than sixty days from the date the director makes such determination.

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

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

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

8. Once the number of pending cases is reduced to the point where the number of staff with the attorney general's office defending the second injury fund can be reduced

from July 2012 levels, the attorney general shall begin reducing such staff in proportion to the number of pending cases which remain.

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

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

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

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