

SECOND REGULAR SESSION

# HOUSE BILL NO. 2672

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DEGROOT.

6775H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 287.280, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation.

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

Section A. Section 287.280, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 287.222 and 287.280, to read as follows:

**287.222. Notwithstanding the provisions of subsection 15 of section 287.220 to the contrary, the division may pay from the second injury fund any of the following second injury fund liabilities prior to those liabilities listed under subsection 15 of section 287.220:**

**(1) All death benefits incurred under subsection 7 of section 287.220 relating to claims for deaths occurring prior to January 1, 2014, consistent with a temporary or final award; and**

**(2) Ongoing medical expenses, but not past medical expenses, under subsection 7 of section 287.220 relating to claims for injuries occurring prior to January 1, 2014, consistent with a temporary or final award that includes future medical benefits.**

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure their entire liability under the workers' compensation law; and may insure in whole or in part their employer liability, under a policy of insurance or a self-insurance plan, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability to do so. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the

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.

9 employer or group of employers are willfully and intentionally violating the provisions of this  
10 chapter with intent to defraud their employees of their right to compensation, suspend or revoke  
11 the right of the employer or group of employers to self-insure their liability. If the employer or  
12 group of employers fail to comply with this section, an injured employee or his or her dependents  
13 may elect after the injury either to bring an action against such employer or group of employers  
14 to recover damages for personal injury or death and it shall not be a defense that the injury or  
15 death was caused by the negligence of a fellow servant, or that the employee had assumed the  
16 risk of the injury or death, or that the injury or death was caused to any degree by the negligence  
17 of the employee; or to recover under this chapter with the compensation payments commuted and  
18 immediately payable; or, if the employee elects to do so, he or she may file a request with the  
19 division for payment to be made for medical expenses out of the second injury fund as provided  
20 in subsection 7 of section 287.220. If the employer or group of employers are carrying their own  
21 insurance, on the application of any person entitled to compensation and on proof of default in  
22 the payment of any installment, the division shall require the employer or group of employers  
23 to furnish security for the payment of the compensation, and if not given, all other compensation  
24 shall be commuted and become immediately payable; provided, that employers engaged in the  
25 mining business shall be required to insure only their liability hereunder to the extent of the  
26 equivalent of the maximum liability under this chapter for ten deaths in any one accident, but the  
27 employer or group of employers may carry their own risk for any excess liability. When a group  
28 of employers enter into an agreement to pool their liabilities under this chapter, individual  
29 members will not be required to qualify as individual self-insurers.

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

35       3. For every entity qualified to group self-insure their liability pursuant to this chapter  
36 or chapter 537, each entity shall not authorize total discounts for any individual member  
37 exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on  
38 objective quantitative factors and applied uniformly to all trust members.

39       4. Any group of employers that have qualified to self-insure their liability pursuant to  
40 this chapter shall file with the division premium rates, based on pure premium rate data, adjusted  
41 for loss development and loss trending as filed by the advisory organization with the department  
42 of insurance, financial institutions and professional registration pursuant to section 287.975, plus  
43 any estimated expenses and other factors or based on average rate classifications calculated by  
44 the department of insurance, financial institutions and professional registration as taken from the

45 premium rates filed by the twenty insurance companies providing the greatest volume of  
46 workers' compensation insurance coverage in this state. The rate is inadequate if funds equal  
47 to the full ultimate cost of anticipated losses and loss adjustment expenses are not produced  
48 when the prospective loss costs are applied to anticipated payrolls. The provisions of this  
49 subsection shall not apply to those political subdivisions of this state that have qualified to  
50 self-insure their liability pursuant to this chapter as authorized by section 537.620 on an  
51 assessment plan. Any such group may file with the division a composite rate for all coverages  
52 provided under that section.

53         5. When considering applications for new trust self-insurers, as described under 8 CSR  
54 50-3.010, the division shall require proof of payment by each member of not less than  
55 twenty-five percent of the estimated annual premium; except that, for new members who wish  
56 to join an existing trust self-insurer during the policy year rather than at the beginning of the  
57 policy year, the division shall require proof of payment of the lesser of the estimated premium  
58 of three months or the estimated premium for the balance of the policy year.

59         6. Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus moneys  
60 from a prior trust year not needed for current obligations. Notwithstanding any provision of law  
61 to the contrary, upon approval by the division, a self-insured trust may invest up to one hundred  
62 percent of surplus moneys in securities designated by the state treasurer as acceptable collateral  
63 to secure state deposits under section 30.270.

64         7. Any finding or determination made by the division under this section may be reviewed  
65 as provided in sections 287.470 and 287.480.

66         **8. If a group of employers who have been granted self-insurance authority under**  
67 **this chapter or chapter 537 or a public sector individual employer granted self-insurance**  
68 **authority under this chapter is deemed insolvent, is determined to be insolvent, or files for**  
69 **bankruptcy, and fails to pay any of its obligations that are owed to an injured employee**  
70 **or an injured employee's dependent or dependents under this chapter, whether based upon**  
71 **a stipulation approved under section 287.390 or based upon an award issued under this**  
72 **chapter, the division shall call upon the entire security posted by the group of employers**  
73 **or public sector individual employer. The division may refer all known losses or cases of**  
74 **the group of employers or public sector individual employer to a third-party administrator**  
75 **or any such entity authorized in this state to administer the workers' compensation cases.**  
76 **The third-party administrator or entity to which the losses are transferred shall have the**  
77 **authority to receive the security proceeds from the division and use the proceeds, after**  
78 **deducting reasonable administrative expenses, to pay the compensation benefits owed**  
79 **under this chapter. The security proceeds shall not be considered state property and shall**  
80 **not be subject to appropriation by the legislature, the treasurer, or any other state agency.**

81 **Any unused portion of the security proceeds shall be returned to the division. The group**  
82 **of employers or public sector individual employer may apply to the division for release of**  
83 **the unused portion of the security proceeds as set forth in rules promulgated by the**  
84 **division. Neither the division nor any third-party administrator shall be obligated or**  
85 **required to pay any obligations or moneys in an amount in excess of the security proceeds,**  
86 **and neither the division nor any third-party administrator shall be liable for any interest**  
87 **or penalties. The joint and several liability of the members of a group that is deemed**  
88 **insolvent, that is determined to be insolvent, or that files for bankruptcy shall continue and**  
89 **shall not be terminated by payment of benefits under this subsection.**

90 **9.** No rule or portion of a rule promulgated under the authority of this section shall  
91 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

92 ~~[9-]~~ **10.** Any records submitted pursuant to this section, and pursuant to any rule  
93 promulgated by the division pursuant to this section, shall be considered confidential and not  
94 subject to chapter 610. Any party to a workers' compensation case involving the party that  
95 submitted the records shall be able to subpoena the records for use in a workers' compensation  
96 case, if the information is otherwise relevant.

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