

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 303
101ST GENERAL ASSEMBLY

1430H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.120, 287.170, 287.180, 287.220, 287.280, and 287.480, RSMo, and to enact in lieu thereof six new sections relating to workers' compensation.

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

Section A. Sections 287.120, 287.170, 287.180, 287.220, 287.280, and 287.480, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 287.120, 287.170, 287.180, 287.220, 287.280, and 287.480, to read as follows: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. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in ~~[an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury]~~ **a willful act with the intent to cause bodily injury or death**. 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.

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

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.

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

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

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

32 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
33 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the
34 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent
35 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled
36 drugs.

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

40 (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under
41 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the
42 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A
43 preponderance of the evidence standard shall apply to rebut such presumption. An employee's
44 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section
45 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter
46 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled
47 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

48 (4) Any positive test result for a nonprescribed controlled drug or the metabolites of such
49 drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a
50 preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's
51 system at the time of the accident or injury and that the injury was sustained in conjunction with
52 the use of the tested nonprescribed controlled drug if:

53 (a) The initial testing was administered within twenty-four hours of the accident or
54 injury;

55 (b) Notice was given to the employee of the test results within fourteen calendar days
56 of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

57 (c) The employee was given an opportunity to perform a second test upon the original
58 sample; and

59 (d) The initial or any subsequent testing that forms the basis of the presumption was
60 confirmed by mass spectrometry using generally accepted medical or forensic testing procedures.

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

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

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

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

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

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

81 10. The ability of a firefighter to receive benefits for psychological stress under section
82 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.170. 1. For temporary total disability the employer shall pay compensation for not
2 more than four hundred weeks during the continuance of such disability at the weekly rate of
3 compensation in effect under this section on the date of the injury for which compensation is
4 being made. The amount of such compensation shall be computed as follows:

5 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
6 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of

7 the injured employee's average weekly earnings as of the date of the injury; provided that the
8 weekly compensation paid under this subdivision shall not exceed an amount equal to seventy
9 percent of the state average weekly wage, as such wage is determined by the division of
10 employment security, as of the July first immediately preceding the date of injury;

11 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
12 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
13 the injured employee's average weekly earnings as of the date of the injury; provided that the
14 weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-
15 five percent of the state average weekly wage, as such wage is determined by the division of
16 employment security, as of the July first immediately preceding the date of injury;

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

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

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

29 2. Temporary total disability payments shall be made to the claimant by check or other
30 negotiable ~~instruments approved by the director which will not result in delay in payment~~
31 **instrument, or by electronic transfer or other manner authorized by the claimant**, and shall
32 be forwarded directly to the claimant without intervention, or, when requested, to claimant's
33 attorney if represented, except as provided in section 454.517, by any other party except by order
34 of the division of workers' compensation.

35 3. An employee is disqualified from receiving temporary total disability during any
36 period of time in which the claimant applies and receives unemployment compensation.

37 4. If the employee is terminated from post-injury employment based upon the employee's
38 post-injury misconduct, neither temporary total disability nor temporary partial disability benefits
39 under this section or section 287.180 are payable. As used in this section, the phrase "post-injury
40 misconduct" shall not include absence from the workplace due to an injury unless the employee
41 is capable of working with restrictions, as certified by a physician.

42 5. If an employee voluntarily separates from employment with an employer at a time
43 when the employer had work available for the employee that was in compliance with any
44 medical restriction imposed upon the employee within a reasonable degree of medical certainty
45 as a result of the injury that is the subject of a claim for benefits under this chapter, neither
46 temporary total disability nor temporary partial disability benefits available under this section
47 or section 287.180 shall be payable.

 287.180. 1. For temporary partial disability, compensation shall be paid during such
2 disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent
3 of the difference between the average earnings prior to the accident and the amount which the
4 employee, in the exercise of reasonable diligence, will be able to earn during the disability, to
5 be determined in view of the nature and extent of the injury and the ability of the employee to
6 compete in an open labor market. The amount of such compensation shall be computed as
7 follows:

8 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
9 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
10 the injured employee's average weekly earnings as of the date of injury; provided that the weekly
11 compensation paid under this subdivision shall not exceed an amount equal to seventy percent
12 of the state average weekly wage, as such wages are determined by the division of employment
13 security, as of the July first immediately preceding the date of injury;

14 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
15 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
16 the injured employee's average weekly earnings as of the date of the injury; provided that the
17 weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-
18 five percent of the state average weekly wage, as such wage is determined by the division of
19 employment security, as of the July first immediately preceding the date of injury;

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

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

30 2. Temporary partial disability payments shall be made to the claimant by check, or other
31 negotiable instrument ~~[approved by the director which will not result in delay in payment]~~ , or
32 **by electronic transfer or other manner authorized by the claimant.**

287.220. 1. There is hereby created in the state treasury a special fund to be known as
2 the "Second Injury Fund" created exclusively for the purposes as in this section provided and for
3 special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of
4 the second injury fund shall be as provided by section 287.710. The state treasurer shall be the
5 custodian of the second injury fund which shall be deposited the same as are state funds and any
6 interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as
7 state funds and accounts and shall be protected by the general bond given by the state treasurer.
8 Upon the requisition of the director of the division of workers' compensation, warrants on the
9 state treasurer for the payment of all amounts payable for compensation and benefits out of the
10 second injury fund shall be issued.

11 2. All cases of permanent disability where there has been previous disability due to
12 injuries occurring prior to January 1, 2014, shall be compensated as provided in this subsection.
13 Compensation shall be computed on the basis of the average earnings at the time of the last
14 injury. If any employee who has a preexisting permanent partial disability whether from
15 compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to
16 employment or to obtaining reemployment if the employee becomes unemployed, and the
17 preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty
18 weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent
19 permanent partial disability, according to the medical standards that are used in determining such
20 compensation, receives a subsequent compensable injury resulting in additional permanent
21 partial disability so that the degree or percentage of disability, in an amount equal to a minimum
22 of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only,
23 equals a minimum of fifteen percent permanent partial disability, caused by the combined
24 disabilities is substantially greater than that which would have resulted from the last injury,
25 considered alone and of itself, and if the employee is entitled to receive compensation on the
26 basis of the combined disabilities, the employer at the time of the last injury shall be liable only
27 for the degree or percentage of disability which would have resulted from the last injury had
28 there been no preexisting disability. After the compensation liability of the employer for the last
29 injury, considered alone, has been determined by an administrative law judge or the commission,
30 the degree or percentage of employee's disability that is attributable to all injuries or conditions
31 existing at the time the last injury was sustained shall then be determined by that administrative
32 law judge or by the commission and the degree or percentage of disability which existed prior
33 to the last injury plus the disability resulting from the last injury, if any, considered alone, shall

34 be deducted from the combined disability, and compensation for the balance, if any, shall be paid
35 out of a special fund known as the second injury fund, hereinafter provided for. If the previous
36 disability or disabilities, whether from compensable injury or otherwise, and the last injury
37 together result in total and permanent disability, the minimum standards under this subsection
38 for a body as a whole injury or a major extremity injury shall not apply and the employer at the
39 time of the last injury shall be liable only for the disability resulting from the last injury
40 considered alone and of itself; except that if the compensation for which the employer at the time
41 of the last injury is liable is less than the compensation provided in this chapter for permanent
42 total disability, then in addition to the compensation for which the employer is liable and after
43 the completion of payment of the compensation by the employer, the employee shall be paid the
44 remainder of the compensation that would be due for permanent total disability under section
45 287.200 out of the second injury fund.

46 3. (1) All claims against the second injury fund for injuries occurring after January 1,
47 2014, and all claims against the second injury fund involving a subsequent compensable injury
48 which is an occupational disease filed after January 1, 2014, shall be compensated as provided
49 in this subsection.

50 (2) No claims for permanent partial disability occurring after January 1, 2014, shall be
51 filed against the second injury fund. Claims for permanent total disability under section 287.200
52 against the second injury fund shall be compensable only when the following conditions are met:

53 (a) a. An employee has a medically documented preexisting disability equaling a
54 minimum of fifty weeks of permanent partial disability compensation according to the medical
55 standards that are used in determining such compensation which is:

56 (i) A direct result of active military duty in any branch of the United States Armed
57 Forces; or

58 (ii) A direct result of a compensable injury as defined in section 287.020; or

59 (iii) Not a compensable injury, but such preexisting disability directly and significantly
60 aggravates or accelerates the subsequent work-related injury and shall not include unrelated
61 preexisting injuries or conditions that do not aggravate or accelerate the subsequent work-related
62 injury; or

63 (iv) A preexisting permanent partial disability of an extremity, loss of eyesight in one
64 eye, or loss of hearing in one ear, when there is a subsequent compensable work-related injury
65 as set forth in subparagraph b of the opposite extremity, loss of eyesight in the other eye, or loss
66 of hearing in the other ear; and

67 b. Such employee thereafter sustains a subsequent compensable work-related injury that,
68 when combined with the preexisting disability, as set forth in items (i), (ii), (iii), or (iv) of

69 subparagraph a. of this paragraph, results in a permanent total disability as defined under this
70 chapter; or

71 (b) An employee is employed in a sheltered workshop as established in sections 205.968
72 to 205.972 or sections 178.900 to 178.960 and such employee thereafter sustains a compensable
73 work-related injury that, when combined with the preexisting disability, results in a permanent
74 total disability as defined under this chapter.

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

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

80 4. (1) In all cases in which a recovery against the second injury fund is sought for
81 permanent partial disability, permanent total disability, or death, the state treasurer as custodian
82 thereof shall be named as a party, and shall be entitled to defend against the claim.

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

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

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

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

103 7. If an employer fails to insure or self-insure as required in section 287.280, funds from
104 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses

incurred relating to claims for injuries occurring prior to January 1, 2014, 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 January 1, 2014, 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.

8. Every 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, 2014. The expenses of such actuarial studies shall be paid out of the fund for the support of the division of workers' compensation.

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 11 of this section. The attorney general shall provide all necessary information to the division for this purpose.

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

11. Any employee who at the time a compensable work-related injury is sustained prior to January 1, 2014, 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

141 allowed by law on the date of the injury. The employer for whom the employee was working
142 where the injury was sustained shall be responsible for all medical costs incurred in regard to that
143 injury.

144 12. No compensation shall be payable from the second injury fund if the employee files
145 a claim for compensation under the workers' compensation law of another state with jurisdiction
146 over the employee's injury or accident or occupational disease.

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

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

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

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

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

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

160 (4) Medical expenses incurred prior to July 1, 2012, under subsection 7 of this section;
161 and

162 (5) Interest on unpaid awards.

163

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

166 16. Post-award interest for the purpose of second injury fund claims shall be set at the
167 adjusted rate of interest established by the director of revenue pursuant to section 32.065 or five
168 percent, whichever is greater.

169 **17. Notwithstanding the provisions of subsection 15 of this section to the contrary,**
170 **the division may pay from the second injury fund any of the following second injury fund**
171 **liabilities prior to those liabilities listed under subsection 15 of this section:**

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

175 **(2) Ongoing medical expenses, but not past medical expenses, under subsection 7**
176 **of this section relating to claims for injuries occurring prior to January 1, 2014, consistent**
177 **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
2 individual or group basis, insure their entire liability under the workers' compensation law; and
3 may insure in whole or in part their employer liability, under a policy of insurance or a
4 self-insurance plan, except as hereafter provided, with some insurance carrier authorized to
5 insure such liability in this state, except that an employer or group of employers may themselves
6 carry the whole or any part of the liability without insurance upon satisfying the division of their
7 ability to do so. If an employer or group of employers have qualified to self-insure their liability
8 under this chapter, the division of workers' compensation may, if it finds after a hearing that the
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 commerce and insurance pursuant to section 287.975, plus any estimated expenses and other
43 factors or based on average rate classifications calculated by the department of commerce and
44 insurance as taken from the premium rates filed by the twenty insurance companies providing
45 the greatest volume of workers' compensation insurance coverage in this state. The rate is
46 inadequate if funds equal to the full ultimate cost of anticipated losses and loss adjustment
47 expenses are not produced when the prospective loss costs are applied to anticipated payrolls.
48 The provisions of this subsection shall not apply to those political subdivisions of this state that
49 have qualified to self-insure their liability pursuant to this chapter as authorized by section
50 537.620 on an assessment plan. Any such group may file with the division a composite rate for
51 all coverages provided under that section.

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

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

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

65 8. **If a group of employers who have been granted self-insurance authority under**
66 **this chapter or chapter 537 or a public sector individual employer granted self-insurance**
67 **authority under this chapter is deemed insolvent, is determined to be insolvent, or files for**
68 **bankruptcy, and fails to pay any of its obligations that are owed to an injured employee**

69 or an injured employee's dependent or dependents under this chapter, whether based upon
70 a stipulation approved under section 287.390 or based upon an award issued under this
71 chapter, the division shall call upon the entire security posted by the group of employers
72 or public sector individual employer. The division may refer all known losses or cases of
73 the group of employers or public sector individual employer to a third-party administrator
74 or any such entity authorized in this state to administer the workers' compensation cases.
75 The third-party administrator or entity to which the losses are transferred shall have the
76 authority to receive the security proceeds from the division and use the proceeds, after
77 deducting reasonable administrative expenses, to pay the compensation benefits owed
78 under this chapter. The security proceeds shall not be considered state property and shall
79 not be subject to appropriation by the general assembly, the treasurer, or any other state
80 agency. Any unused portion of the security proceeds shall be returned to the division. The
81 group of employers or public sector individual employer may apply to the division for
82 release of the unused portion of the security proceeds as set forth in rules promulgated by
83 the division. Neither the division nor any third-party administrator shall be obligated or
84 required to pay any obligations or moneys in an amount in excess of the security proceeds,
85 and neither the division nor any third-party administrator shall be liable for any interest
86 or penalties. The joint and several liability of the members of a group that is deemed
87 insolvent, that is determined to be insolvent, or that files for bankruptcy shall continue and
88 shall not be terminated by payment of benefits under this subsection.

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

91 [9.] 10. Any records submitted pursuant to this section, and pursuant to any rule
92 promulgated by the division pursuant to this section, shall be considered confidential and not
93 subject to chapter 610. Any party to a workers' compensation case involving the party that
94 submitted the records shall be able to subpoena the records for use in a workers' compensation
95 case, if the information is otherwise relevant.

287.480. 1. If an application for review is made to the commission within twenty days
2 from the date of the award, the full commission, if the first hearing was not held before the full
3 commission, shall review the evidence, or, if considered advisable, as soon as practicable hear
4 the parties at issue, their representatives and witnesses and shall make an award and file it in like
5 manner as specified in section 287.470. Any notice of appeal, application or other paper required
6 under this law to be filed with the division or the commission shall, when mailed to or
7 transmitted by electronic facsimile meeting the requirements of the division and received by the
8 division or the commission, be deemed to be filed as of the date endorsed by the United States
9 post office on the envelope or container in which such paper is received, or the date received if

10 filed by facsimile. In instances where the last day for the filing of any such paper falls on a
11 Sunday or legal holiday, the filing shall be deemed timely if accomplished on the next day
12 subsequent which is neither a Sunday or a legal holiday. When filing by electronic facsimile
13 meeting the requirements of the division, the parties shall, on the same date as the facsimile
14 transmission, mail by the United States mail the original and the requisite number of copies to
15 the commission. **In addition, the commission may allow filing of applications for review,**
16 **briefs, motions, and other requests for relief with the commission by electronic means, in**
17 **such manner as the commission may, by regulation, prescribe.**

18 2. An employer who has been determined by the division to be an employer subject to
19 and operating pursuant to this chapter and has also been determined to be uninsured may file an
20 application for review but such application for review shall be accompanied with and attached
21 to the application for review a bond which shall be conditioned for the satisfaction of the award
22 in full, and if for any reason the appeal is dismissed or if the award is affirmed or modified, to
23 satisfy in full such modification of the award as the commission may award. The surety on such
24 bond shall be a bank, savings and loan institution or an insurance company licensed to do
25 business in the state of Missouri. No appeal to the commission shall be considered filed unless
26 accompanied by such bond and such bond shall also be a prerequisite for appeal as provided in
27 section 287.495 and such appeal pursuant to section 287.495 shall not be considered filed unless
28 accompanied by such bond. If any other employer pursuant to section 287.040 would be liable,
29 the employee shall be paid benefits from the bond until the bond is exhausted before the section
30 287.040 employer is required to pay.

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