

SECOND REGULAR SESSION

HOUSE BILL NO. 2681

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON.

5747H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 287.280, RSMo, and to enact in lieu thereof one new section relating to supplemental workers' compensation insurance for certain first responders.

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

Section A. Section 287.280, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.280, to read as follows:

287.280. 1. (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 employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his or her dependents may elect after the injury either to bring an action against such employer or group of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of 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.

18 employee; or to recover under this chapter with the compensation payments commuted and
19 immediately payable; or, if the employee elects to do so, he or she may file a request with the
20 division for payment to be made for medical expenses out of the second injury fund as
21 provided in subsection 7 of section 287.220. If the employer or group of employers are
22 carrying their own insurance, on the application of any person entitled to compensation and
23 on proof of default in the payment of any installment, the division shall require the employer
24 or group of employers to furnish security for the payment of the compensation, and if not
25 given, all other compensation shall be commuted and become immediately payable; provided,
26 that employers engaged in the mining business shall be required to insure only their liability
27 hereunder to the extent of the equivalent of the maximum liability under this chapter for ten
28 deaths in any one accident, but the employer or group of employers may carry their own risk
29 for any excess liability. When a group of employers enter into an agreement to pool their
30 liabilities under this chapter, individual members will not be required to qualify as individual
31 self-insurers.

32 **(2) An employer or group of employers subject to the provisions of this chapter**
33 **may contract for additional supplemental insurance coverage for volunteer firefighters**
34 **injured in the line of duty to cover additional payment of workers' compensation**
35 **benefits under the law, including temporary total disability benefits owed under section**
36 **287.250, for over and above the statutory amounts allowed under this chapter.**
37 **Notwithstanding any law to the contrary, nothing in this subdivision prevents a**
38 **volunteer fire department, a county or regional association of volunteer fire**
39 **departments, municipality, or any combination of these, or groups of employers, that**
40 **have been granted authority by the division to self-insure their workers' compensation**
41 **liabilities, from optionally contributing in part or in whole to the payment of premiums**
42 **relating to the additional supplemental insurance coverage. In addition to any other**
43 **purpose authorized by law, a county governing body or a municipal governing body**
44 **may use proceeds from county and municipal taxes not earmarked for other purposes**
45 **for the purposes of providing additional supplemental insurance coverage under this**
46 **subdivision.**

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

52 3. For every entity qualified to group self-insure their liability pursuant to this chapter
53 or chapter 537, each entity shall not authorize total discounts for any individual member

54 exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on
55 objective quantitative factors and applied uniformly to all trust members.

56 4. Any group of employers that have qualified to self-insure their liability pursuant to
57 this chapter shall file with the division premium rates, based on pure premium rate data,
58 adjusted for loss development and loss trending as filed by the advisory organization with the
59 department of commerce and insurance pursuant to section 287.975, plus any estimated
60 expenses and other factors or based on average rate classifications calculated by the
61 department of commerce and insurance as taken from the premium rates filed by the twenty
62 insurance companies providing the greatest volume of workers' compensation insurance
63 coverage in this state. The rate is inadequate if funds equal to the full ultimate cost of
64 anticipated losses and loss adjustment expenses are not produced when the prospective loss
65 costs are applied to anticipated payrolls. The provisions of this subsection shall not apply to
66 those political subdivisions of this state that have qualified to self-insure their liability
67 pursuant to this chapter as authorized by section 537.620 on an assessment plan. Any such
68 group may file with the division a composite rate for all coverages provided under that
69 section.

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

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

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

83 8. If a group of employers who have been granted self-insurance authority under this
84 chapter or chapter 537 or a public sector individual employer granted self-insurance authority
85 under this chapter is deemed insolvent, determined to be insolvent, or files for bankruptcy,
86 and fails to pay any of its obligations that are owed to an injured employee or an injured
87 employee's dependent or dependents pursuant to this chapter, whether based upon a
88 compromise settlement approved pursuant to section 287.390 or based upon an award issued
89 pursuant to this chapter, the division shall call upon the entire security posted by the group of
90 employers or public sector individual employer. The division may refer all known losses or

91 cases of the group of employers or public sector individual employer to a third-party
92 administrator or any such entity authorized in this state to administer the workers'
93 compensation cases. The third-party administrator or entity to which the losses are
94 transferred shall have the authority to receive the security proceeds from the division and use
95 the proceeds, after deducting reasonable administrative expenses, to pay the compensation
96 benefits owed pursuant to this chapter. The security proceeds shall not be considered state
97 property and shall not be subject to appropriation by the general assembly. Any unused
98 portion of the security proceeds shall be returned to the division. The group of employers or
99 public sector individual employer may apply to the division for release of the unused portion
100 of the security proceeds as set forth in rules promulgated by the division. Neither the division
101 nor any third-party administrator shall be obligated or required to pay any obligations or
102 moneys in an amount in excess of the security proceeds, and neither the division nor any
103 third-party administrator shall be liable for any interest or penalties. The joint and several
104 liability of the members of a group that is deemed insolvent, that is determined to be
105 insolvent, or that files for bankruptcy shall continue and shall not be terminated by payment
106 of benefits under this subsection.

107 9. No rule or portion of a rule promulgated under the authority of this section shall
108 become effective unless it has been promulgated pursuant to the provisions of section
109 536.024.

110 10. Any records submitted pursuant to this section, and pursuant to any rule
111 promulgated by the division pursuant to this section, shall be considered confidential and not
112 subject to chapter 610. Any party to a workers' compensation case involving the party that
113 submitted the records shall be able to subpoena the records for use in a workers'
114 compensation case, if the information is otherwise relevant.

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