

SECOND REGULAR SESSION

[CORRECTED]

[PERFECTED]

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.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.067, 287.120, 287.140, 287.141, 287.143, 287.149, 287.150, 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof thirteen 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 287.067, 287.120, 287.140, 287.141, 287.143, 287.149, 287.150,
2 287.160, 287.210, 287.220, 287.690, and 287.715, RSMo, are repealed and thirteen new sections
3 enacted in lieu thereof, to be known as sections 287.067, 287.120, 287.140, 287.141, 287.143,
4 287.149, 287.150, 287.160, 287.165, 287.210, 287.220, 287.690, and 287.715, to read as
5 follows:

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,
2 unless a different meaning is clearly indicated by the context, an identifiable disease arising with
3 or without human fault out of and in the course of the employment. Ordinary diseases of life to
4 which the general public is exposed outside of the employment shall not be compensable, except
5 where the diseases follow as an incident of an occupational disease as defined in this section.
6 The disease need not to have been foreseen or expected but after its contraction it must appear

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.

7 to have had its origin in a risk connected with the employment and to have flowed from that
8 source as a rational consequence.

9 2. An injury **or death** by occupational disease is compensable only if the occupational
10 exposure was the prevailing factor in causing both the resulting medical condition and disability.
11 The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
12 both the resulting medical condition and disability. Ordinary, gradual deterioration, or
13 progressive degeneration of the body caused by aging or by the normal activities of day-to-day
14 living shall not be compensable.

15 3. An injury due to repetitive motion is recognized as an occupational disease for
16 purposes of this chapter. An occupational disease due to repetitive motion is compensable only
17 if the occupational exposure was the prevailing factor in causing both the resulting medical
18 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation
19 to any other factor, causing both the resulting medical condition and disability. Ordinary,
20 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal
21 activities of day-to-day living shall not be compensable.

22 4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for
23 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to
24 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of
25 producing occupational deafness.

26 5. "Radiation disability" is recognized as an occupational disease for purposes of this
27 chapter and is hereby defined to be that disability due to radioactive properties or substances or
28 to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the
29 use of or direct contact with radium or radioactive properties or substances or the use of or direct
30 exposure to Roentgen rays (X-rays) or ionizing radiation.

31 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the
32 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases
33 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,
34 carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police
35 officers of a paid police department certified under chapter 590 if a direct causal relationship is
36 established, or psychological stress of firefighters of a paid fire department if a direct causal
37 relationship is established.

38 7. Any employee who is exposed to and contracts any contagious or communicable
39 disease arising out of and in the course of his or her employment shall be eligible for benefits
40 under this chapter as an occupational disease.

41 8. With regard to occupational disease due to repetitive motion, if the exposure to the
42 repetitive motion which is found to be the cause of the injury is for a period of less than three
43 months and the evidence demonstrates that the exposure to the repetitive motion with the

44 immediate prior employer was the prevailing factor in causing the injury, the prior employer
45 shall be liable for such occupational disease.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for
3 personal injury or death of the employee by accident **or occupational disease** arising out of and
4 in the course of the employee's employment[.]. **Any employee of such employer shall not be**
5 **liable for any injury or death for which compensation is recoverable under this chapter** and
6 **every employer and employees of such employer** shall be released from all other liability
7 therefor whatsoever, whether to the employee or any other person, **except that an employee**
8 **shall not be released from liability for injury or death if the employee engaged in an**
9 **affirmative negligent act that purposefully and dangerously caused or increased the risk**
10 **of injury.** The term "accident" as used in this section shall include, but not be limited to, injury
11 or death of the employee caused by the unprovoked violence or assault against the employee by
12 any person.

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

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

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

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

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

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

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

68 10. The ability of a firefighter to receive benefits for psychological stress under section
69 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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

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

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. If the employee desires, he shall have the right to select his own physician, surgeon,
6 or other such requirement at his own expense. Where the requirements are furnished by a public
7 hospital or other institution, payment therefor shall be made to the proper authorities. Regardless
8 of whether the health care provider is selected by the employer or is selected by the employee
9 at the employee's expense, the health care provider shall have the affirmative duty to
10 communicate fully with the employee regarding the nature of the employee's injury and
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure
12 to perform such duty to communicate shall constitute a disciplinary violation by the provider
13 subject to the provisions of chapter 620. When an employee is required to submit to medical
14 examinations or necessary medical treatment at a place outside of the local or metropolitan area
15 from the employee's principal place of employment, the employer [or] , its insurer, **or the second**
16 **injury fund** shall advance or reimburse the employee for all necessary and reasonable expenses;
17 except that an injured employee who resides outside the state of Missouri and who is employed
18 by an employer located in Missouri shall have the option of selecting the location of services
19 provided in this section either at a location within one hundred miles of the injured employee's
20 residence, place of injury or place of hire by the employer. The choice of provider within the
21 location selected shall continue to be made by the employer. In case of a medical examination
22 if a dispute arises as to what expenses shall be paid by the employer, the matter shall be
23 presented to the legal advisor, the administrative law judge or the commission, who shall set the
24 sum to be paid and same shall be paid by the employer prior to the medical examination. In no
25 event, however, shall the employer [or] , its insurer, **or the second injury fund** be required to
26 pay transportation costs for a greater distance than two hundred fifty miles each way from place
27 of treatment.

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

32 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
33 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
34 cases. A health care provider shall not charge a fee for treatment and care which is governed by
35 the provisions of this chapter greater than the usual and customary fee the provider receives for

36 the same treatment or service when the payor for such treatment or service is a private individual
37 or a private health insurance carrier. The division or the commission, or the board of
38 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all
39 disputes as to such charges. A health care provider is bound by the determination upon the
40 reasonableness of health care bills.

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

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

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

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

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

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

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

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

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

85 (1) The patient;

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

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

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

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

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

101 (2) The notice shall include:

102 (a) The name of the employer;

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

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

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

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

107 (3) When an injury is found to be noncompensable under this chapter, the hospital,
108 physician or other health care provider shall be entitled to pursue the employee for any unpaid
109 portion of the fee or other charges for authorized services provided to the employee. Any

110 applicable statute of limitations for an action for such fees or other charges shall be tolled from
111 the time notice is given to the division by a hospital, physician or other health care provider
112 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in
113 regard to the injury which is the basis of such services is made, or in the event there is an appeal
114 to the labor and industrial relations commission, until a decision is rendered by that commission.

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

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

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

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

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

8 2. The division of workers' compensation shall continuously study the problems of
9 physical rehabilitation and shall investigate all rehabilitation facilities, both private and public,

10 and upon such investigation shall approve as qualified all such facilities, institutions and
11 physicians as are capable of rendering competent physical rehabilitation service for seriously
12 injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and
13 physical restoration services. No facility or institution shall be considered as qualified unless it
14 is equipped to provide physical rehabilitation services for persons suffering either from some
15 specialized type of disability or general type of disability within the field of industrial injury, and
16 unless such facility or institution is operated under the supervision of a physician qualified to
17 render physical rehabilitation service and is staffed with trained and qualified personnel and has
18 received a certificate of qualification from the division of workers' compensation. No physician
19 shall be considered as qualified unless he has had the experience prescribed by the division.

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

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

36 5. If the parties disagree as to such physical rehabilitation treatment, where such
37 treatment appears necessary, then either the employee, the employer, or insurer may file a request
38 with the division of workers' compensation for an order for physical rehabilitation and the
39 director of the division shall hear the parties within ten days after the filing of the request. The
40 director of the division shall forthwith notify the parties of the time and place of the hearing, and
41 the hearing shall be held at a place to be designated at the discretion of the division. The director
42 of the division may conduct such hearing or he may direct one of the administrative law judges
43 to conduct same. Such hearing shall be informal in all respects. The director of the division
44 shall, after considering all evidence at such hearing, within ten days make his order in the matter,
45 either denying such request or ordering the employer or insurer within a reasonable time, to
46 furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of

47 the employer or insurer. [When the order requires physical rehabilitation, it shall also include
48 an order to requisition the payment of forty dollars per week out of the second injury fund in the
49 state treasury to the injured employee during such time as such employee is actually receiving
50 physical rehabilitation.]

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

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

57 8. An appeal from any order of the division of workers' compensation hereby created to
58 the appellate court may be taken and governed in all respects in the same manner as appeals in
59 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,
2 sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational
3 rehabilitation to a severely injured employee. An employee shall submit to appropriate vocational
4 testing and a vocational rehabilitation assessment scheduled by an employer [or] , its insurer, **or**
5 **the attorney general on behalf of the second injury fund if the employer has not obtained**
6 **a vocational rehabilitation assessment.**

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

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

6 3. Refusal of the employee to accept rehabilitation services or submit to a vocational
7 rehabilitation assessment as deemed necessary by the employer **or the attorney general on**
8 **behalf of the second injury fund** shall result in a fifty percent reduction in all disability
9 payments to an employee, including temporary partial disability benefits paid pursuant to section
10 287.180, for each week of the period of refusal.

287.150. 1. Where a third person is liable to the employee or to the dependents, for the
2 injury or death, the employer shall be subrogated to the right of the employee or to the
3 dependents against such third person, and the recovery by such employer shall not be limited to
4 the amount payable as compensation to such employee or dependents, but such employer may
5 recover any amount which such employee or his dependents would have been entitled to recover.
6 Any recovery by the employer against such third person shall be apportioned between the
7 employer and employee or his dependents using the provisions of subsections 2 and 3 of this
8 section.

9 2. When a third person is liable for the death of an employee and compensation is paid
10 or payable under this chapter, and recovery is had by a dependent under this chapter either by
11 judgment or settlement for the wrongful death of the employee, the employer shall have a
12 subrogation lien on any recovery and shall receive or have credit for sums paid or payable under
13 this chapter to any of the dependents of the deceased employee to the extent of the settlement or
14 recovery by such dependents for the wrongful death. Recovery by the employer and credit for
15 future installments shall be computed using the provisions of subsection 3 of this section relating
16 to comparative fault of the employee.

17 3. Whenever recovery against the third person is effected by the employee or his
18 dependents, the employer shall pay from his share of the recovery a proportionate share of the
19 expenses of the recovery, including a reasonable attorney fee. After the expenses and attorney
20 fee have been paid, the balance of the recovery shall be apportioned between the employer and
21 the employee or his dependents in the same ratio that the amount due the employer bears to the
22 total amount recovered if there is no finding of comparative fault on the part of the employee,
23 or the total damages determined by the trier of fact if there is a finding of comparative fault on
24 the part of the employee. Notwithstanding the foregoing provision, the balance of the recovery
25 may be divided between the employer and the employee or his dependents as they may otherwise
26 agree. Any part of the recovery found to be due to the employer, the employee or his dependents
27 shall be paid forthwith and any part of the recovery paid to the employee or his dependents under
28 this section shall be treated by them as an advance payment by the employer on account of any
29 future installments of compensation in the following manner:

30 (1) The total amount paid to the employee or his dependents shall be treated as an
31 advance payment if there is no finding of comparative fault on the part of the employee; or

32 (2) A percentage of the amount paid to the employee or his dependents equal to the
33 percentage of fault assessed to the third person from whom recovery is made shall be treated as
34 an advance payment if there is a finding of comparative fault on the part of the employee.

35 4. In any case in which an injured employee has been paid benefits from the second
36 injury fund as provided in subsection 3 of section 287.141, and recovery is had against the third
37 party liable to the employee for the injury, the second injury fund shall be subrogated to the
38 rights of the employee against said third party to the extent of the payments made to him from
39 such fund, subject to provisions of subsections 2 and 3 of this section.

40 5. No construction design professional who is retained to perform professional services
41 on a construction project or any employee of a construction design professional who is assisting
42 or representing the construction design professional in the performance of professional services
43 on the site of the construction project shall be liable for any injury resulting from the employer's
44 failure to comply with safety standards on a construction project for which compensation is
45 recoverable under the workers' compensation law, unless responsibility for safety practices is

46 specifically assumed by contract. The immunity provided by this subsection to any construction
47 design professional shall not apply to the negligent preparation of design plans or specifications.

48 6. Any provision in any contract or subcontract, where one party is an employer in the
49 construction group of code classifications, which purports to waive subrogation rights provided
50 under this section in anticipation of a future injury or death is hereby declared against public
51 policy and void. Each contract of insurance for workers' compensation shall require the insurer
52 to diligently pursue all subrogation rights of the employer and shall require the employer to fully
53 cooperate with the insurer in pursuing such recoveries, except that the employer may enter into
54 compromise agreements with an insurer in lieu of the insurer pursuing subrogation against
55 another party. The amount of any subrogation recovery by an insurer shall be credited against
56 the amount of the actual paid losses in the determination of such employer's experience
57 modification factor within forty-five days of the collection of such amount.

58 **7. Notwithstanding any other provision of this section, when a third person is liable**
59 **to the employee or to the dependents of an employee in a case when there is a finding that**
60 **an occupational disease was caused by toxic exposure and the employee or dependents are**
61 **compensated under this chapter, in no case shall the employer be subrogated to the rights**
62 **of an employee or to the dependents of an employee against such third person when the**
63 **employer caused the occupational disease. As used in this subsection, the term "toxic**
64 **exposure" is defined to mean exposure to chemicals, dusts, particulates, fumes, mists,**
65 **fibers, solvents, vapors, radiation, or other substances or materials that, when ingested,**
66 **consumed, inhaled, or absorbed are sufficient to cause disease, death, mutations, cancer,**
67 **deformities, or reproductive abnormalities in humans.**

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

6 2. Compensation shall be payable as the wages were paid prior to the injury, but in any
7 event at least once every two weeks. If an injured employee claims benefits pursuant to this
8 section, an employer may, if the employee agrees in writing, pay directly to the employee any
9 benefits due pursuant to section 287.170. The employer shall continue such payments until the
10 insurer starts making the payments or the claim is contested by any party. Where the claim is
11 found to be compensable the employer's workers' compensation insurer shall indemnify the
12 employer for any payments made pursuant to this subsection. If the employee's claim is found
13 to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer,
14 or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

15 (1) Lump sum payment;

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

17 (3) Payroll deduction; or

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

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

37 4. Compensation shall be payable in accordance with the rules given in sections 287.170,
38 287.180, 287.190, 287.200, 287.240, and 287.250.

39 5. The employer shall not be entitled to credit for wages or such pay benefits paid to the
40 employee or his dependents on account of the injury or death except as provided in section
41 287.270.

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

287.210. 1. After an employee has received an injury he shall from time to time
2 thereafter during disability submit to reasonable medical examination at the request of the
3 employer, [his] **the employer's** insurer, the commission, the division [or] , an administrative law
4 judge, **or the attorney general on behalf of the second injury fund if the employer has not
5 obtained a medical examination report**, the time and place of which shall be fixed with due
6 regard to the convenience of the employee and his physical condition and ability to attend. The
7 employee may have his own physician present, and if the employee refuses to submit to the
8 examination, or in any way obstructs it, his right to compensation shall be forfeited during such

9 period unless in the opinion of the commission the circumstances justify the refusal or
10 obstruction.

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

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

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

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

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

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

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

80 9. The division or the commission may in its discretion in extraordinary cases order a
81 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

38 disability or disabilities, whether from compensable injury or otherwise, and the last injury
39 together result in total and permanent disability, the minimum standards under this subsection
40 for a body as a whole injury or a major extremity injury shall not apply and the employer at the
41 time of the last injury shall be liable only for the disability resulting from the last injury
42 considered alone and of itself; except that if the compensation for which the employer at the time
43 of the last injury is liable is less than the compensation provided in this chapter for permanent
44 total disability, then in addition to the compensation for which the employer is liable and after
45 the completion of payment of the compensation by the employer, the employee shall be paid the
46 remainder of the compensation that would be due for permanent total disability under section
47 287.200 out of [a special fund known as the "Second Injury Fund" hereby created exclusively
48 for the purposes as in this section provided and for special weekly benefits in rehabilitation cases
49 as provided in section 287.141. Maintenance of the second injury fund shall be as provided by
50 section 287.710. The state treasurer shall be the custodian of the second injury fund which shall
51 be deposited the same as are state funds and any interest accruing thereon shall be added thereto.
52 The fund shall be subject to audit the same as state funds and accounts and shall be protected by
53 the general bond given by the state treasurer. Upon the requisition of the director of the division
54 of workers' compensation, warrants on the state treasurer for the payment of all amounts payable
55 for compensation and benefits out of the second injury fund shall be issued.

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

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

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

63 **(a) An employee has a medically documented preexisting permanent partial**
64 **disability as a direct result of active military duty in any branch of the United States armed**
65 **forces or as a result of a preexisting permanent partial disability from a compensable**
66 **injury as defined in section 287.020;**

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

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

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

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

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

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

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

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

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

98 **(3) The state treasurer, with the advice and consent of the attorney general and**
99 **with the express authorization of a majority of the second injury fund commission, may**
100 **enter into compromise settlements with dependents of claimants, whether finally**
101 **adjudicated or not, arising from the Missouri supreme court's decision in Schoemehl v.**
102 **Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).**

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

111 appropriations made by the general assembly, from the fund, to the attorney general's office for
112 this specific purpose.

113 [3.] 5. If more than one injury in the same employment causes concurrent temporary
114 disabilities, compensation shall be payable only for the longest and largest paying disability.

115 [4.] 6. If more than one injury in the same employment causes concurrent and
116 consecutive permanent partial disability, compensation payments for each subsequent disability
117 shall not begin until the end of the compensation period of the prior disability.

118 [5.] 7. If an employer fails to insure or self-insure as required in section 287.280, funds
119 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
120 expenses **incurred relating to claims for injuries occurring prior to the effective date of this**
121 **section**, to cure and relieve the effects of the injury or disability of an injured employee in the
122 employ of an uninsured employer **consistent with subsection 3 of section 287.140**, or in the
123 case of death of an employee in the employ of an uninsured employer, funds from the second
124 injury fund may be withdrawn to cover fair, reasonable, and necessary expenses **incurred**
125 **relating to a death occurring prior to the effective date of this section**, in the manner required
126 in sections 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer
127 of the state of Missouri, as custodian of the second injury fund, shall have the same defenses to
128 such claims as would the uninsured employer. Any funds received by the employee or the
129 employee's dependents, through civil or other action, must go towards reimbursement of the
130 second injury fund, for all payments made to the employee, the employee's dependents, or paid
131 on the employee's behalf, from the second injury fund pursuant to this subsection. The office of
132 the attorney general of the state of Missouri shall bring suit in the circuit court of the county in
133 which the accident occurred against any employer not covered by this chapter as required in
134 section 287.280.

135 [6.] 8. Every [three years] **year** the second injury fund shall have an actuarial study
136 made to determine the solvency of the fund **taking into consideration any existing balance**
137 **carried forward from a previous year**, appropriate funding level of the fund, and forecasted
138 expenditures from the fund. The first actuarial study shall be completed prior to July 1, [1988]
139 **2013**. The expenses of such actuarial studies shall be paid out of the fund for the support of the
140 division of workers' compensation.

141 [7.] 9. The director of the division of workers' compensation shall maintain the financial
142 data and records concerning the fund for the support of the division of workers' compensation
143 and the second injury fund. The division shall also compile and report data on claims made
144 pursuant to subsection 9 of this section. The attorney general shall provide all necessary
145 information to the division for this purpose.

146 [8.] 10. All claims for fees and expenses filed against the second injury fund and all
147 records pertaining thereto shall be open to the public.

148 [9.] **11.** Any employee who at the time a compensable work-related injury is sustained
149 **prior to the effective date of this section** is employed by more than one employer, the employer
150 for whom the employee was working when the injury was sustained shall be responsible for
151 wage loss benefits applicable only to the earnings in that employer's employment and the injured
152 employee shall be entitled to file a claim against the second injury fund for any additional wage
153 loss benefits attributed to loss of earnings from the employment or employments where the injury
154 did not occur, up to the maximum weekly benefit less those benefits paid by the employer in
155 whose employment the employee sustained the injury. The employee shall be entitled to a total
156 benefit based on the total average weekly wage of such employee computed according to
157 subsection 8 of section 287.250. The employee shall not be entitled to a greater rate of
158 compensation than allowed by law on the date of the injury. The employer for whom the
159 employee was working where the injury was sustained shall be responsible for all medical costs
160 incurred in regard to that injury.

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

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

169 **14. Notwithstanding the requirements of section 287.470, the director may suspend,**
170 **in whole or in part, the life payments to an injured employee made from the fund when the**
171 **employee becomes eligible to receive Social Security benefits. In no case shall the sum of**
172 **the amount of monthly payments from the fund and the monthly Social Security benefits**
173 **attributable to the employee's injury, be less than the monthly life payments from the fund**
174 **the employee has been receiving.**

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

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

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

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

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

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

186 **(5) Interest on unpaid awards.**

187 **Such liabilities shall be paid to the extent the fund has a positive balance. Any unpaid**
188 **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
2 of administering this chapter [and for the purpose set out in subsection 2 of this section], every
3 person, partnership, association, corporation, whether organized under the laws of this or any
4 other state or country, the state of Missouri, including any of its departments, divisions, agencies,
5 commissions, and boards or any political subdivisions of the state who self-insure or hold
6 themselves out to be any part self-insured, company, mutual company, the parties to any
7 interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring
8 employers in this state against liability for personal injuries to their employees, or for death
9 caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net
10 deposits, net premiums or net assessments received, whether in cash or notes in this state, or on
11 account of business done in this state, for such insurance in this state at the rate of two percent
12 in lieu of all [other] **premium** taxes on such net deposits, net premiums or net assessments,
13 which amount of taxes shall be assessed and collected as herein provided. Beginning October
14 31, 1993, and every year thereafter, the director of the division of workers' compensation shall
15 estimate the amount of revenue required to administer this chapter and the **division** director shall
16 determine the rate of tax to be paid in the following calendar year pursuant to this section
17 commencing with the calendar year beginning on January 1, 1994. If the balance of the fund
18 [estimated to be] on hand on [December thirty-first] **July first** of the year each tax rate
19 determination is made **on October thirty-first** is less than one hundred ten percent of the
20 previous year's expenses plus any additional revenue required due to new statutory requirements
21 given to the division by the general assembly, then the **division** director shall impose a tax not
22 to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments,
23 rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed
24 and collected as herein provided. The net premium equivalent for individual self-insured
25 employers and any group of political subdivisions of this state qualified to self-insure their
26 liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate
27 classifications calculated by the department of insurance, financial institutions and professional
28 registration as taken from premium rates filed by the twenty insurance companies providing the
29 greatest volume of workers' compensation insurance coverage in this state. For employers
30 qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of
31 employers in accordance with subsection 2 of section 287.280 shall be the net premium
32 equivalent. Every entity required to pay the tax imposed pursuant to this section and section

33 287.730 shall be notified by the division of workers' compensation within ten calendar days of
34 the date of the determination of the rate of tax to be imposed for the following year. Net
35 premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross
36 assessments less canceled or returned premiums, premium deposits or assessments and less
37 dividends or savings, actually paid or credited.

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

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

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

25 year. The net premium equivalent for individual self-insured employers and any group of
26 political subdivisions of this state qualified to self-insure their liability pursuant to this chapter
27 as authorized by section 537.620 shall be based on average rate classifications calculated by the
28 department of insurance, financial institutions and professional registration as taken from
29 premium rates filed by the twenty insurance companies providing the greatest volume of workers'
30 compensation insurance coverage in this state. For employers qualified to self-insure their
31 liability pursuant to this chapter, the rates filed by such group of employers in accordance with
32 subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance
33 funds from the workers' compensation fund to the second injury fund if surcharge collections
34 prove to be insufficient. Any funds advanced from the workers' compensation fund to the second
35 injury fund must be reimbursed by the second injury fund no later than December thirty-first of
36 the year following the advance. The surcharge shall be collected from policyholders by each
37 insurer at the same time and in the same manner that the premium is collected, but no insurer or
38 its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection.
39 The surcharge is not subject to any taxes, licenses or fees.

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

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

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

55 **6. In order to maintain the fiscal solvency of the second injury fund, should the**
56 **anticipated collections authorized in subsection 2 of this section fail to be sufficient to meet**
57 **its current and anticipated legal obligations, provide funds to settle cases, and provide**
58 **funds for the administration of the fund for calendar years 2013, 2014, 2015, 2016, 2017,**
59 **2018, and 2019, the director of the division of workers' compensation, shall determine the**
60 **amount of revenue so required. Notwithstanding subsection 2 of this section to the**
61 **contrary, such necessary funds as determined by the director of the division of workers'**

62 compensation shall be collected with a supplemental surcharge, not to exceed one and one-
63 half percent, calculated in like manner as authorized in subsection 2 of this section. All
64 policyholders and self-insurers shall be notified by the division of workers' compensation
65 of the supplemental surcharge percent to be imposed for such period of time as part of the
66 notice provided in subsection 2 of this section. The provisions of this subsection shall
67 expire on December 31, 2019.

68 7. In order to maintain the fiscal solvency of the second injury fund, should the
69 anticipated collections authorized in subsections 2 and 6 of this section fail to be sufficient
70 to meet its current and anticipated legal obligations, provide funds to settle cases, and
71 provide funds for the administration of the fund for calendar years 2014, 2015, 2016, 2017,
72 2018, and 2019, second injury fund commission, shall determine on or before October
73 thirty-first the amount of revenue so required for the following calendar year.
74 Notwithstanding subsection 2 of this section to the contrary, such necessary funds as
75 determined by the second injury fund commission shall be collected with a supplemental
76 surcharge, not to exceed one and one-half percent, calculated in like manner as authorized
77 in subsection 2 of this section. All policyholders and self-insurers shall be notified by the
78 division of workers' compensation of the supplemental surcharge percent to be imposed
79 for such period of time as part of the notice provided in subsection 2 of this section. The
80 provisions of this subsection shall expire on December 31, 2019.

81 8. Once the number of pending cases is reduced to the point where the number of
82 staff with the attorney general's office defending the second injury fund can be reduced
83 from July 2012 levels, the attorney general shall begin reducing such staff in proportion
84 to the number of pending cases which remain.

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

87 10. The "Second Injury Fund Commission" is hereby established. The second
88 injury fund commission shall be composed of four members including the governor, the
89 attorney general, the president pro tem of the senate, and the speaker of the house of
90 representatives. Commission members may not appoint a designee to serve in their
91 absence. The second injury fund commission shall convene as necessary as determined by
92 the governor. The second injury fund commission shall also reconvene within thirty days
93 of any official written request submitted to the governor by any member of the second
94 injury fund commission. The surcharge amount as authorized under subsection 7 of this
95 section shall be reviewed and established annually by the second injury fund commission
96 by a three-fourths vote. The office of attorney general and the division of workers'
97 compensation shall provide technical assistance and support to the members of the second
98 injury fund commission, for purposes of this section. The members of the second injury

99 **fund commission shall receive no compensation in addition to their salary as governor,**
100 **attorney general, or members of the general assembly, but may receive their necessary**
101 **expenses while attending the meetings of the commission, to be paid out of the second**
102 **injury fund.**

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

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