

FIRST REGULAR SESSION

# HOUSE BILL NO. 163

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VEIT.

0073H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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

Section A. Sections 287.220, 287.280, and 287.480, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.220, 287.280, and 287.480, to read as follows:

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 cases of permanent disability where there has been previous disability due to injuries occurring prior to January 1, 2014, shall be compensated as provided in this subsection. 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

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.

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  
105 incurred relating to claims for injuries occurring prior to January 1, 2014, to cure and relieve the  
106 effects of the injury or disability of an injured employee in the employ of an uninsured employer  
107 consistent with subsection 3 of section 287.140, or in the case of death of an employee in the  
108 employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover  
109 fair, reasonable, and necessary expenses incurred relating to a death occurring prior to January  
110 1, 2014, in the manner required in sections 287.240 and 287.241. In defense of claims arising  
111 under this subsection, the treasurer of the state of Missouri, as custodian of the second injury  
112 fund, shall have the same defenses to such claims as would the uninsured employer. Any funds  
113 received by the employee or the employee's dependents, through civil or other action, must go  
114 towards reimbursement of the second injury fund, for all payments made to the employee, the  
115 employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant  
116 to this subsection. The office of the attorney general of the state of Missouri shall bring suit in  
117 the circuit court of the county in which the accident occurred against any employer not covered  
118 by this chapter as required in section 287.280.

119 8. Every year the second injury fund shall have an actuarial study made to determine the  
120 solvency of the fund taking into consideration any existing balance carried forward from a  
121 previous year, appropriate funding level of the fund, and forecasted expenditures from the fund.  
122 The first actuarial study shall be completed prior to July 1, 2014. The expenses of such actuarial  
123 studies shall be paid out of the fund for the support of the division of workers' compensation.

124           9. The director of the division of workers' compensation shall maintain the financial data  
125 and records concerning the fund for the support of the division of workers' compensation and the  
126 second injury fund. The division shall also compile and report data on claims made pursuant to  
127 subsection 11 of this section. The attorney general shall provide all necessary information to the  
128 division for this purpose.

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

131           11. Any employee who at the time a compensable work-related injury is sustained prior  
132 to January 1, 2014, is employed by more than one employer, the employer for whom the  
133 employee was working when the injury was sustained shall be responsible for wage loss benefits  
134 applicable only to the earnings in that employer's employment and the injured employee shall be  
135 entitled to file a claim against the second injury fund for any additional wage loss benefits  
136 attributed to loss of earnings from the employment or employments where the injury did not  
137 occur, up to the maximum weekly benefit less those benefits paid by the employer in whose  
138 employment the employee sustained the injury. The employee shall be entitled to a total benefit  
139 based on the total average weekly wage of such employee computed according to subsection 8  
140 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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