

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, January 29, 2013, with recommendation that the Senate Committee Substitute do pass.

0225S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 287.067, 287.120, 287.140, 287.210, 287.220, 287.690, 287.715, and 287.745, RSMo, and to enact in lieu thereof nine new sections relating to workers' compensation, with an existing penalty provision and 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Section A. Sections 287.067, 287.120, 287.140, 287.210, 287.220, 287.690, 287.715, and 287.745, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 287.067, 287.120, 287.140, 287.165, 287.210, 287.220, 287.690, 287.715, and 287.745, to read as follows:

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

2. An injury **or death** by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 degeneration of the body caused by aging or by the normal activities of day-to-day
16 living shall not be compensable.

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

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

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

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

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

47 8. With regard to occupational disease due to repetitive motion, if the
48 exposure to the repetitive motion which is found to be the cause of the injury is
49 for a period of less than three months and the evidence demonstrates that the
50 exposure to the repetitive motion with the immediate prior employer was the

51 prevailing factor in causing the injury, the prior employer shall be liable for such
52 occupational disease.

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

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

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

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

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

35 or follow the rule so adopted for the safety of the employees.

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

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

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

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

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

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

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

70 8. Mental injury resulting from work-related stress does not arise out of

71 and in the course of the employment, unless it is demonstrated that the stress is
72 work related and was extraordinary and unusual. The amount of work stress
73 shall be measured by objective standards and actual events.

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

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

287.140. 1. In addition to all other compensation paid to the employee
2 under this section, the employee shall receive and the employer shall provide
3 such medical, surgical, chiropractic, and hospital treatment, including nursing,
4 custodial, ambulance and medicines, as may reasonably be required after the
5 injury or disability, to cure and relieve from the effects of the injury. If the
6 employee desires, he shall have the right to select his own physician, surgeon, or
7 other such requirement at his own expense. Where the requirements are
8 furnished by a public hospital or other institution, payment therefor shall be
9 made to the proper authorities. Regardless of whether the health care provider
10 is selected by the employer or is selected by the employee at the employee's
11 expense, the health care provider shall have the affirmative duty to communicate
12 fully with the employee regarding the nature of the employee's injury and
13 recommended treatment exclusive of any evaluation for a permanent disability
14 rating. Failure to perform such duty to communicate shall constitute a
15 disciplinary violation by the provider subject to the provisions of chapter
16 620. When an employee is required to submit to medical examinations or
17 necessary medical treatment at a place outside of the local or metropolitan area
18 from the employee's principal place of employment, the employer or its insurer
19 shall advance or reimburse the employee for all necessary and reasonable
20 expenses; except that an injured employee who resides outside the state of
21 Missouri and who is employed by an employer located in Missouri shall have the
22 option of selecting the location of services provided in this section either at a
23 location within one hundred miles of the injured employee's residence, place of
24 injury or place of hire by the employer. The choice of provider within the location
25 selected shall continue to be made by the employer. In case of a medical
26 examination if a dispute arises as to what expenses shall be paid by the

27 employer, the matter shall be presented to the legal advisor, the administrative
28 law judge or the commission, who shall set the sum to be paid and same shall be
29 paid by the employer prior to the medical examination. In no event, however,
30 shall the employer or its insurer be required to pay transportation costs for a
31 greater distance than two hundred fifty miles each way from place of treatment.

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

37 3. All fees and charges under this chapter shall be fair and reasonable,
38 shall be subject to regulation by the division or the commission, or the board of
39 rehabilitation in rehabilitation cases. A health care provider shall not charge a
40 fee for treatment and care which is governed by the provisions of this chapter
41 greater than the usual and customary fee the provider receives for the same
42 treatment or service when the payor for such treatment or service is a private
43 individual or a private health insurance carrier. The division or the commission,
44 or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction
45 to hear and determine all disputes as to such charges. A health care provider is
46 bound by the determination upon the reasonableness of health care bills.

47 4. The division shall, by regulation, establish methods to resolve disputes
48 concerning the reasonableness of medical charges, services, or aids. This
49 regulation shall govern resolution of disputes between employers and medical
50 providers over fees charged, whether or not paid, and shall be in lieu of any other
51 administrative procedure under this chapter. The employee shall not be a party
52 to a dispute over medical charges, nor shall the employee's recovery in any way
53 be jeopardized because of such dispute. **Under such regulation, any**
54 **application for payment of additional reimbursement, as such term is**
55 **used in 8 CSR 50-2.030, as amended, shall be filed not later than:**

56 (1) **Two years from the date the medical services were rendered**
57 **if such services were rendered before July 1, 2013; and**

58 (2) **One year from the date the medical services were rendered**
59 **if such services were rendered on or after July 1, 2013.**

60 5. No compensation shall be payable for the death or disability of an
61 employee, if and insofar as the death or disability may be caused, continued or
62 aggravated by any unreasonable refusal to submit to any medical or surgical

63 treatment or operation, the risk of which is, in the opinion of the division or the
64 commission, inconsiderable in view of the seriousness of the injury. If the
65 employee dies as a result of an operation made necessary by the injury, the death
66 shall be deemed to be caused by the injury.

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

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

76 8. The employer may be required by the division or the commission to
77 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic
78 joints, or eyes, or braces, as needed, for life whenever the division or the
79 commission shall find that the injured employee may be partially or wholly
80 relieved of the effects of a permanent injury by the use thereof. The director of
81 the division shall establish a procedure whereby a claim for compensation may
82 be reactivated after settlement of such claim is completed. The claim shall be
83 reactivated only after the claimant can show good cause for the reactivation of
84 this claim and the claim shall be made only for the payment of medical
85 procedures involving life-threatening surgical procedures or if the claimant
86 requires the use of a new, or the modification, alteration or exchange of an
87 existing, prosthetic device. For the purpose of this subsection, "life threatening"
88 shall mean a situation or condition which, if not treated immediately, will likely
89 result in the death of the injured worker.

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

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

98 11. Any physician or other health care provider who orders, directs or

99 refers a patient for treatment, testing, therapy or rehabilitation at any institution
100 or facility shall, at or prior to the time of the referral, disclose in writing if such
101 health care provider, any of his partners or his employer has a financial interest
102 in the institution or facility to which the patient is being referred, to the
103 following:

104 (1) The patient;

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

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

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

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

110 13. (1) No hospital, physician or other health care provider, other than
111 a hospital, physician or health care provider selected by the employee at his own
112 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
113 any fee or any portion of a fee for services rendered to an employee due to a
114 work-related injury or report to any credit reporting agency any failure of the
115 employee to make such payment, when an injury covered by this chapter has
116 occurred and such hospital, physician or health care provider has received actual
117 notice given in writing by the employee, the employer or the employer's
118 insurer. Actual notice shall be deemed received by the hospital, physician or
119 health care provider five days after mailing by certified mail by the employer or
120 insurer to the hospital, physician or health care provider.

121 (2) The notice shall include:

122 (a) The name of the employer;

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

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

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

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

127 (3) When an injury is found to be noncompensable under this chapter, the
128 hospital, physician or other health care provider shall be entitled to pursue the
129 employee for any unpaid portion of the fee or other charges for authorized
130 services provided to the employee. Any applicable statute of limitations for an
131 action for such fees or other charges shall be tolled from the time notice is given
132 to the division by a hospital, physician or other health care provider pursuant to
133 subdivision (6) of this subsection, until a determination of noncompensability in
134 regard to the injury which is the basis of such services is made, or in the event

135 there is an appeal to the labor and industrial relations commission, until a
136 decision is rendered by that commission.

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

143 (5) If an employer or insurer fails to make payment for authorized
144 services provided to the employee by a hospital, physician or other health care
145 provider pursuant to this chapter, the hospital, physician or other health care
146 provider may proceed pursuant to subsection 4 of this section with a dispute
147 against the employer or insurer for any fees or other charges for services
148 provided.

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

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

**287.165. Unless otherwise provided for under this chapter,
2 interest for the purpose of this chapter shall be set at the adjusted rate
3 of interest established by the director of revenue pursuant to section
4 32.065.**

287.210. 1. After an employee has received an injury he shall from time
2 to time thereafter during disability submit to reasonable medical examination at
3 the request of the employer, [his] **the employer's** insurer, the commission, the
4 division [or], an administrative law judge, **or the attorney general on behalf**

5 **of the second injury fund if the employer has not obtained a medical**
6 **examination report**, the time and place of which shall be fixed with due regard
7 to the convenience of the employee and his physical condition and ability to
8 attend. The employee may have his own physician present, and if the employee
9 refuses to submit to the examination, or in any way obstructs it, his right to
10 compensation shall be forfeited during such period unless in the opinion of the
11 commission the circumstances justify the refusal or obstruction.

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

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

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

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

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

58 7. The testimony of a treating or examining physician may be submitted
59 in evidence on the issues in controversy by a complete medical report and shall
60 be admissible without other foundational evidence subject to compliance with the
61 following procedures. The party intending to submit a complete medical report
62 in evidence shall give notice at least sixty days prior to the hearing to all parties
63 and shall provide reasonable opportunity to all parties to obtain
64 cross-examination testimony of the physician by deposition. The notice shall
65 include a copy of the report and all the clinical and treatment records of the
66 physician including copies of all records and reports received by the physician
67 from other health care providers. The party offering the report must make the
68 physician available for cross-examination testimony by deposition not later than
69 seven days before the matter is set for hearing, and each cross-examiner shall
70 compensate the physician for the portion of testimony obtained in an amount not
71 to exceed a rate of reasonable compensation taking into consideration the
72 specialty practiced by the physician. Cross-examination testimony shall not bind
73 the cross-examining party. Any testimony obtained by the offering party shall be
74 at that party's expense on a proportional basis, including the deposition fee of the
75 physician. Upon request of any party, the party offering a complete medical
76 report in evidence must also make available copies of X rays or other diagnostic

77 studies obtained by or relied upon by the physician. Within ten days after receipt
78 of such notice a party shall dispute whether a report meets the requirements of
79 a complete medical report by providing written objections to the offering party
80 stating the grounds for the dispute, and at the request of any party, the
81 administrative law judge shall rule upon such objections upon pretrial hearing
82 whether the report meets the requirements of a complete medical report and upon
83 the admissibility of the report or portions thereof. If no objections are filed the
84 report is admissible, and any objections thereto are deemed waived. Nothing
85 herein shall prevent the parties from agreeing to admit medical reports or records
86 by consent. [The provisions of this subsection shall not apply to claims against
87 the second injury fund.]

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

94 9. The division or the commission may in its discretion in extraordinary
95 cases order a postmortem examination and for that purpose may also order a body
96 exhumed.

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

15 2. **All claims against the second injury fund for injuries
16 occurring prior to the effective date of this section shall be**

17 **compensated as provided in this subsection.** All cases of permanent
18 disability where there has been previous disability shall be compensated as
19 herein provided. Compensation shall be computed on the basis of the average
20 earnings at the time of the last injury. If any employee who has a preexisting
21 permanent partial disability whether from compensable injury or otherwise, of
22 such seriousness as to constitute a hindrance or obstacle to employment or to
23 obtaining reemployment if the employee becomes unemployed, and the preexisting
24 permanent partial disability, if a body as a whole injury, equals a minimum of
25 fifty weeks of compensation or, if a major extremity injury only, equals a
26 minimum of fifteen percent permanent partial disability, according to the medical
27 standards that are used in determining such compensation, receives a subsequent
28 compensable injury resulting in additional permanent partial disability so that
29 the degree or percentage of disability, in an amount equal to a minimum of fifty
30 weeks compensation, if a body as a whole injury or, if a major extremity injury
31 only, equals a minimum of fifteen percent permanent partial disability, caused
32 by the combined disabilities is substantially greater than that which would have
33 resulted from the last injury, considered alone and of itself, and if the employee
34 is entitled to receive compensation on the basis of the combined disabilities, the
35 employer at the time of the last injury shall be liable only for the degree or
36 percentage of disability which would have resulted from the last injury had there
37 been no preexisting disability. After the compensation liability of the employer
38 for the last injury, considered alone, has been determined by an administrative
39 law judge or the commission, the degree or percentage of employee's disability
40 that is attributable to all injuries or conditions existing at the time the last injury
41 was sustained shall then be determined by that administrative law judge or by
42 the commission and the degree or percentage of disability which existed prior to
43 the last injury plus the disability resulting from the last injury, if any, considered
44 alone, shall be deducted from the combined disability, and compensation for the
45 balance, if any, shall be paid out of a special fund known as the second injury
46 fund, hereinafter provided for. If the previous disability or disabilities, whether
47 from compensable injury or otherwise, and the last injury together result in total
48 and permanent disability, the minimum standards under this subsection for a
49 body as a whole injury or a major extremity injury shall not apply and the
50 employer at the time of the last injury shall be liable only for the disability
51 resulting from the last injury considered alone and of itself; except that if the
52 compensation for which the employer at the time of the last injury is liable is less

53 than the compensation provided in this chapter for permanent total disability,
54 then in addition to the compensation for which the employer is liable and after
55 the completion of payment of the compensation by the employer, the employee
56 shall be paid the remainder of the compensation that would be due for permanent
57 total disability under section 287.200 out of [a special fund known as the "Second
58 Injury Fund" hereby created exclusively for the purposes as in this section
59 provided and for special weekly benefits in rehabilitation cases as provided in
60 section 287.141. Maintenance of the second injury fund shall be as provided by
61 section 287.710. The state treasurer shall be the custodian of the second injury
62 fund which shall be deposited the same as are state funds and any interest
63 accruing thereon shall be added thereto. The fund shall be subject to audit the
64 same as state funds and accounts and shall be protected by the general bond
65 given by the state treasurer. Upon the requisition of the director of the division
66 of workers' compensation, warrants on the state treasurer for the payment of all
67 amounts payable for compensation and benefits out of the second injury fund
68 shall be issued.

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

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

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

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

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

86 **(c) Such employee thereafter sustains a subsequent compensable**
87 **work-related injury that, when combined with the preexisting**
88 **disability, as set forth in paragraphs (a) and (b) of this subdivision,**

89 results in a permanent total disability as defined under this chapter.

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

94 (3) Compensation for benefits payable under this subsection shall
95 be based on the employee's compensation rate calculated under section
96 287.250.

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

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

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

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

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

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

125 (4) For all claims filed against the second injury fund on or after July 1,

126 1994, the attorney general shall use assistant attorneys general except in
127 circumstances where an actual or potential conflict of interest exists, to provide
128 legal services as may be required in all claims made for recovery against the
129 fund. Any legal expenses incurred by the attorney general's office in the handling
130 of such claims, including, but not limited to, medical examination fees **incurred**
131 **under sections 287.210 and the expenses provided for under section**
132 **287.140**, expert witness fees, court reporter expenses, travel costs, and related
133 legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of
134 such legal expenses shall be contingent upon annual appropriations made by the
135 general assembly, from the fund, to the attorney general's office for this specific
136 purpose.

137 [3.] 5. If more than one injury in the same employment causes concurrent
138 temporary disabilities, compensation shall be payable only for the longest and
139 largest paying disability.

140 [4.] 6. If more than one injury in the same employment causes concurrent
141 and consecutive permanent partial disability, compensation payments for each
142 subsequent disability shall not begin until the end of the compensation period of
143 the prior disability.

144 [5.] 7. If an employer fails to insure or self-insure as required in section
145 287.280, funds from the second injury fund may be withdrawn to cover the fair,
146 reasonable, and necessary expenses **incurred relating to claims for injuries**
147 **occurring prior to the effective date of this section**, to cure and relieve the
148 effects of the injury or disability of an injured employee in the employ of an
149 uninsured employer **consistent with subsection 3 of section 287.140**, or in
150 the case of death of an employee in the employ of an uninsured employer, funds
151 from the second injury fund may be withdrawn to cover fair, reasonable, and
152 necessary expenses **incurred relating to a death occurring prior to the**
153 **effective date of this section**, in the manner required in sections 287.240 and
154 287.241. In defense of claims arising under this subsection, the treasurer of the
155 state of Missouri, as custodian of the second injury fund, shall have the same
156 defenses to such claims as would the uninsured employer. Any funds received by
157 the employee or the employee's dependents, through civil or other action, must
158 go towards reimbursement of the second injury fund, for all payments made to the
159 employee, the employee's dependents, or paid on the employee's behalf, from the
160 second injury fund pursuant to this subsection. The office of the attorney general
161 of the state of Missouri shall bring suit in the circuit court of the county in which

162 the accident occurred against any employer not covered by this chapter as
163 required in section 287.280.

164 [6.] **8.** Every [three years] **year** the second injury fund shall have an
165 actuarial study made to determine the solvency of the fund **taking into**
166 **consideration any existing balance carried forward from a previous**
167 **year**, appropriate funding level of the fund, and forecasted expenditures from the
168 fund. The first actuarial study shall be completed prior to July 1, [1988]
169 **2014**. The expenses of such actuarial studies shall be paid out of the fund for the
170 support of the division of workers' compensation.

171 [7.] **9.** The director of the division of workers' compensation shall
172 maintain the financial data and records concerning the fund for the support of the
173 division of workers' compensation and the second injury fund. The division shall
174 also compile and report data on claims made pursuant to subsection 9 of this
175 section. The attorney general shall provide all necessary information to the
176 division for this purpose.

177 [8.] **10.** All claims for fees and expenses filed against the second injury
178 fund and all records pertaining thereto shall be open to the public.

179 [9.] **11.** Any employee who at the time a compensable work-related injury
180 is sustained **prior to the effective date of this section** is employed by more
181 than one employer, the employer for whom the employee was working when the
182 injury was sustained shall be responsible for wage loss benefits applicable only
183 to the earnings in that employer's employment and the injured employee shall be
184 entitled to file a claim against the second injury fund for any additional wage loss
185 benefits attributed to loss of earnings from the employment or employments
186 where the injury did not occur, up to the maximum weekly benefit less those
187 benefits paid by the employer in whose employment the employee sustained the
188 injury. The employee shall be entitled to a total benefit based on the total
189 average weekly wage of such employee computed according to subsection 8 of
190 section 287.250. The employee shall not be entitled to a greater rate of
191 compensation than allowed by law on the date of the injury. The employer for
192 whom the employee was working where the injury was sustained shall be
193 responsible for all medical costs incurred in regard to that injury.

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

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

205 **14. All awards issued under this chapter affecting the second**
206 **injury fund shall be subject to the provisions of this chapter governing**
207 **review and appeal.**

208 **15. The division shall pay any liabilities of the fund in the**
209 **following priority:**

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

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

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

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

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

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

 287.690. [1.] Prior to December 31, 1993, for the purpose of providing for
2 the expense of administering this chapter [and for the purpose set out in
3 subsection 2 of this section], every person, partnership, association, corporation,
4 whether organized under the laws of this or any other state or country, the state
5 of Missouri, including any of its departments, divisions, agencies, commissions,
6 and boards or any political subdivisions of the state who self-insure or hold
7 themselves out to be any part self-insured, company, mutual company, the parties
8 to any interindemnity contract, or other plan or scheme, and every other
9 insurance carrier, insuring employers in this state against liability for personal
10 injuries to their employees, or for death caused thereby, under this chapter, shall
11 pay, as provided in this chapter, tax upon the net deposits, net premiums or net
12 assessments received, whether in cash or notes in this state, or on account of
13 business done in this state, for such insurance in this state at the rate of two

14 percent in lieu of all [other] **premium** taxes on such net deposits, net premiums
15 or net assessments, which amount of taxes shall be assessed and collected as
16 herein provided. Beginning October 31, 1993, and every year thereafter, the
17 director of the division of workers' compensation shall estimate the amount of
18 revenue required to administer this chapter and the **division** director shall
19 determine the rate of tax to be paid in the following calendar year pursuant to
20 this section commencing with the calendar year beginning on January 1, 1994. If
21 the balance of the fund [estimated to be] on hand on [December thirty-first] **July**
22 **first** of the year each tax rate determination is made **on October thirty-first**
23 is less than one hundred ten percent of the previous year's expenses plus any
24 additional revenue required due to new statutory requirements given to the
25 division by the general assembly, then the **division** director shall impose a tax
26 not to exceed two percent in lieu of all other taxes on net deposits, net premiums
27 or net assessments, rounded up to the nearest one-half of a percentage point,
28 which amount of taxes shall be assessed and collected as herein provided. The
29 net premium equivalent for individual self-insured employers and any group of
30 political subdivisions of this state qualified to self-insure their liability pursuant
31 to this chapter as authorized by section 537.620 shall be based on average rate
32 classifications calculated by the department of insurance, financial institutions
33 and professional registration as taken from premium rates filed by the twenty
34 insurance companies providing the greatest volume of workers' compensation
35 insurance coverage in this state. For employers qualified to self-insure their
36 liability pursuant to this chapter, the rates filed by such group of employers in
37 accordance with subsection 2 of section 287.280 shall be the net premium
38 equivalent. Every entity required to pay the tax imposed pursuant to this section
39 and section 287.730 shall be notified by the division of workers' compensation
40 within ten calendar days of the date of the determination of the rate of tax to be
41 imposed for the following year. Net premiums, net deposits or net assessments
42 are defined as gross premiums, gross deposits or gross assessments less canceled
43 or returned premiums, premium deposits or assessments and less dividends or
44 savings, actually paid or credited.

45 [2. After January 1, 1994, the director of the division shall make one or
46 more loans to the Missouri employers mutual insurance company in an amount
47 not to exceed an aggregate amount of five million dollars from the fund
48 maintained to administer this chapter for start-up funding and initial
49 capitalization of the company. The board of the company shall make application

50 to the director for the loans, stating the amount to be loaned to the company. The
51 loans shall be for a term of five years and, at the time the application for such
52 loans is approved by the director, shall bear interest at the annual rate based on
53 the rate for linked deposit loans as calculated by the state treasurer pursuant to
54 section 30.758.]

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

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

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

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

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

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

66 **6. In order to maintain the fiscal solvency of the second injury**
67 **fund, should the anticipated collections authorized in subsection 2 of**

68 this section fail to be sufficient to meet its current and anticipated
69 legal obligations, provide funds to settle cases, and provide funds for
70 the administration of the fund for calendar years 2014, 2015, 2016, 2017,
71 2018, 2019, and 2020, the director of the division of workers'
72 compensation, shall determine the amount of revenue so
73 required. Notwithstanding subsection 2 of this section to the contrary,
74 such necessary funds as determined by the director of the division of
75 workers' compensation shall be collected with a supplemental
76 surcharge, not to exceed one and one-half percent, calculated in like
77 manner as authorized in subsection 2 of this section. All policyholders
78 and self-insurers shall be notified by the division of workers'
79 compensation of the supplemental surcharge percent to be imposed for
80 such period of time as part of the notice provided in subsection 2 of
81 this section. The provisions of this subsection shall expire on
82 December 31, 2020.

83 7. In order to maintain the fiscal solvency of the second injury
84 fund, should the anticipated collections authorized in subsections 2 and
85 6 of this section fail to be sufficient to meet its current and anticipated
86 legal obligations, provide funds to settle cases, and provide funds for
87 the administration of the fund for calendar years 2015, 2016, 2017, 2018,
88 2019, and 2020, the second injury fund commission shall determine on
89 or before October thirty-first the amount of revenue so required for the
90 following calendar year. Notwithstanding subsection 2 of this section
91 to the contrary, such necessary funds as determined by the second
92 injury fund commission shall be collected with a supplemental
93 surcharge, not to exceed one and one-half percent, calculated in like
94 manner as authorized in subsection 2 of this section. All policyholders
95 and self-insurers shall be notified by the division of workers'
96 compensation of the supplemental surcharge percent to be imposed for
97 such period of time as part of the notice provided in subsection 2 of
98 this section. The provisions of this subsection shall expire on
99 December 31, 2020.

100 8. Once the number of pending cases is reduced to the point
101 where the number of staff with the attorney general's office defending
102 the second injury fund can be reduced from July 2013 levels, the
103 attorney general shall begin reducing such staff in proportion to the
104 number of pending cases which remain.

105 **9. Funds collected under the provisions of this chapter shall be**
106 **the sole funding source of the second injury fund.**

107 **10. The "Second Injury Fund Commission" is hereby**
108 **established. The second injury fund commission shall be composed of**
109 **four members including the governor, the attorney general, the**
110 **president pro tem of the senate, and the speaker of the house of**
111 **representatives. Commission members may not appoint a designee to**
112 **serve in their absence. The second injury fund commission shall**
113 **convene as necessary as determined by the governor. The second**
114 **injury fund commission shall also reconvene within thirty days of any**
115 **official written request submitted to the governor by any member of the**
116 **second injury fund commission. The surcharge amount as authorized**
117 **under subsection 7 of this section shall be reviewed and established**
118 **annually by the second injury fund commission by a three-fourths vote.**
119 **The office of attorney general and the division of workers'**
120 **compensation shall provide technical assistance and support to the**
121 **members of the second injury fund commission, for purposes of this**
122 **section. The members of the second injury fund commission shall**
123 **receive no compensation in addition to their salary as governor,**
124 **attorney general, or members of the general assembly, but may receive**
125 **their necessary expenses while attending the meetings of the**
126 **commission, to be paid out of the second injury fund.**

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715
2 are not paid when due, the taxpayer shall be required to pay, as part of such tax,
3 interest thereon at the rate of one and one-half percent per month for each month
4 or fraction thereof delinquent. In the event the state prevails in any dispute
5 concerning an assessment of tax which has not been paid by the taxpayer,
6 interest shall be paid upon the amount found due to the state at the rate of one
7 and one-half percent per month for each month or fraction thereof delinquent.

8 2. In any legal contest concerning the amount of tax under sections
9 287.690, 287.710 and 287.715 for a calendar year, the quarterly installments for
10 the following year shall continue to be made based upon the amount assessed by
11 the director of revenue for the year in question. If after the end of any taxable
12 year, the amount of the actual tax due is less than the total amount of the
13 installments actually paid, the amount by which the amount paid exceeds the
14 amount due shall **at the election of the taxpayer be refunded or credited**

15 against the tax for the following year and **in the event of a credit**, deducted
16 from the quarterly installment otherwise due on June first.

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

Unofficial ✓

Bill

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