

FIRST REGULAR SESSION

SENATE BILL NO. 361

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

1164S.01I

ADRIANE D. CROUSE, Secretary

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.

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,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 287.220, 287.280, and 287.480, to read as
4 follows:

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

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

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

49 all injuries or conditions existing at the time the last
50 injury was sustained shall then be determined by that
51 administrative law judge or by the commission and the degree
52 or percentage of disability which existed prior to the last
53 injury plus the disability resulting from the last injury,
54 if any, considered alone, shall be deducted from the
55 combined disability, and compensation for the balance, if
56 any, shall be paid out of a special fund known as the second
57 injury fund, hereinafter provided for. If the previous
58 disability or disabilities, whether from compensable injury
59 or otherwise, and the last injury together result in total
60 and permanent disability, the minimum standards under this
61 subsection for a body as a whole injury or a major extremity
62 injury shall not apply and the employer at the time of the
63 last injury shall be liable only for the disability
64 resulting from the last injury considered alone and of
65 itself; except that if the compensation for which the
66 employer at the time of the last injury is liable is less
67 than the compensation provided in this chapter for permanent
68 total disability, then in addition to the compensation for
69 which the employer is liable and after the completion of
70 payment of the compensation by the employer, the employee
71 shall be paid the remainder of the compensation that would
72 be due for permanent total disability under section 287.200
73 out of the second injury fund.

74 3. (1) All claims against the second injury fund for
75 injuries occurring after January 1, 2014, and all claims
76 against the second injury fund involving a subsequent
77 compensable injury which is an occupational disease filed
78 after January 1, 2014, shall be compensated as provided in
79 this subsection.

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

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

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

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

94 (iii) Not a compensable injury, but such preexisting
95 disability directly and significantly aggravates or
96 accelerates the subsequent work-related injury and shall not
97 include unrelated preexisting injuries or conditions that do
98 not aggravate or accelerate the subsequent work-related
99 injury; or

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

106 b. Such employee thereafter sustains a subsequent
107 compensable work-related injury that, when combined with the
108 preexisting disability, as set forth in items (i), (ii),
109 (iii), or (iv) of subparagraph a. of this paragraph, results
110 in a permanent total disability as defined under this
111 chapter; or

112 (b) An employee is employed in a sheltered workshop as
113 established in sections 205.968 to 205.972 or sections
114 178.900 to 178.960 and such employee thereafter sustains a
115 compensable work-related injury that, when combined with the
116 preexisting disability, results in a permanent total
117 disability as defined under this chapter.

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

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

126 4. (1) In all cases in which a recovery against the
127 second injury fund is sought for permanent partial
128 disability, permanent total disability, or death, the state
129 treasurer as custodian thereof shall be named as a party,
130 and shall be entitled to defend against the claim.

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

139 (3) For all claims filed against the second injury
140 fund on or after July 1, 1994, the attorney general shall
141 use assistant attorneys general except in circumstances
142 where an actual or potential conflict of interest exists, to
143 provide legal services as may be required in all claims made

144 for recovery against the fund. Any legal expenses incurred
145 by the attorney general's office in the handling of such
146 claims, including, but not limited to, medical examination
147 fees incurred under sections 287.210 and the expenses
148 provided for under section 287.140, expert witness fees,
149 court reporter expenses, travel costs, and related legal
150 expenses shall be paid by the fund. Effective July 1, 1993,
151 the payment of such legal expenses shall be contingent upon
152 annual appropriations made by the general assembly, from the
153 fund, to the attorney general's office for this specific
154 purpose.

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

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

164 7. If an employer fails to insure or self-insure as
165 required in section 287.280, funds from the second injury
166 fund may be withdrawn to cover the fair, reasonable, and
167 necessary expenses incurred relating to claims for injuries
168 occurring prior to January 1, 2014, to cure and relieve the
169 effects of the injury or disability of an injured employee
170 in the employ of an uninsured employer consistent with
171 subsection 3 of section 287.140, or in the case of death of
172 an employee in the employ of an uninsured employer, funds
173 from the second injury fund may be withdrawn to cover fair,
174 reasonable, and necessary expenses incurred relating to a
175 death occurring prior to January 1, 2014, in the manner

176 required in sections 287.240 and 287.241. In defense of
177 claims arising under this subsection, the treasurer of the
178 state of Missouri, as custodian of the second injury fund,
179 shall have the same defenses to such claims as would the
180 uninsured employer. Any funds received by the employee or
181 the employee's dependents, through civil or other action,
182 must go towards reimbursement of the second injury fund, for
183 all payments made to the employee, the employee's
184 dependents, or paid on the employee's behalf, from the
185 second injury fund pursuant to this subsection. The office
186 of the attorney general of the state of Missouri shall bring
187 suit in the circuit court of the county in which the
188 accident occurred against any employer not covered by this
189 chapter as required in section 287.280.

190 8. Every year the second injury fund shall have an
191 actuarial study made to determine the solvency of the fund
192 taking into consideration any existing balance carried
193 forward from a previous year, appropriate funding level of
194 the fund, and forecasted expenditures from the fund. The
195 first actuarial study shall be completed prior to July 1,
196 2014. The expenses of such actuarial studies shall be paid
197 out of the fund for the support of the division of workers'
198 compensation.

199 9. The director of the division of workers'
200 compensation shall maintain the financial data and records
201 concerning the fund for the support of the division of
202 workers' compensation and the second injury fund. The
203 division shall also compile and report data on claims made
204 pursuant to subsection 11 of this section. The attorney
205 general shall provide all necessary information to the
206 division for this purpose.

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

210 11. Any employee who at the time a compensable work-
211 related injury is sustained prior to January 1, 2014, is
212 employed by more than one employer, the employer for whom
213 the employee was working when the injury was sustained shall
214 be responsible for wage loss benefits applicable only to the
215 earnings in that employer's employment and the injured
216 employee shall be entitled to file a claim against the
217 second injury fund for any additional wage loss benefits
218 attributed to loss of earnings from the employment or
219 employments where the injury did not occur, up to the
220 maximum weekly benefit less those benefits paid by the
221 employer in whose employment the employee sustained the
222 injury. The employee shall be entitled to a total benefit
223 based on the total average weekly wage of such employee
224 computed according to subsection 8 of section 287.250. The
225 employee shall not be entitled to a greater rate of
226 compensation than allowed by law on the date of the injury.
227 The employer for whom the employee was working where the
228 injury was sustained shall be responsible for all medical
229 costs incurred in regard to that injury.

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

235 13. Notwithstanding the requirements of section
236 287.470, the life payments to an injured employee made from
237 the fund shall be suspended when the employee is able to
238 obtain suitable gainful employment or be self-employed in

239 view of the nature and severity of the injury. The division
240 shall promulgate rules setting forth a reasonable standard
241 means test to determine if such employment warrants the
242 suspension of benefits.

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

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

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

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

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

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

256 (5) Interest on unpaid awards.

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

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

264 **17. Notwithstanding the provisions of subsection 15 of**
265 **this section to the contrary, the division may pay from the**
266 **second injury fund any of the following second injury fund**
267 **liabilities prior to those liabilities listed under**
268 **subsection 15 of this section:**

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

273 (2) Ongoing medical expenses, but not past medical
274 expenses, under subsection 7 of this section relating to
275 claims for injuries occurring prior to January 1, 2014,
276 consistent with a temporary or final award that includes
277 future medical benefits.

287.280. 1. Every employer subject to the provisions
2 of this chapter shall, on either an individual or group
3 basis, insure their entire liability under the workers'
4 compensation law; and may insure in whole or in part their
5 employer liability, under a policy of insurance or a self-
6 insurance plan, except as hereafter provided, with some
7 insurance carrier authorized to insure such liability in
8 this state, except that an employer or group of employers
9 may themselves carry the whole or any part of the liability
10 without insurance upon satisfying the division of their
11 ability to do so. If an employer or group of employers have
12 qualified to self-insure their liability under this chapter,
13 the division of workers' compensation may, if it finds after
14 a hearing that the employer or group of employers are
15 willfully and intentionally violating the provisions of this
16 chapter with intent to defraud their employees of their
17 right to compensation, suspend or revoke the right of the
18 employer or group of employers to self-insure their
19 liability. If the employer or group of employers fail to
20 comply with this section, an injured employee or his or her
21 dependents may elect after the injury either to bring an
22 action against such employer or group of employers to
23 recover damages for personal injury or death and it shall

24 not be a defense that the injury or death was caused by the
25 negligence of a fellow servant, or that the employee had
26 assumed the risk of the injury or death, or that the injury
27 or death was caused to any degree by the negligence of the
28 employee; or to recover under this chapter with the
29 compensation payments commuted and immediately payable; or,
30 if the employee elects to do so, he or she may file a
31 request with the division for payment to be made for medical
32 expenses out of the second injury fund as provided in
33 subsection 7 of section 287.220. If the employer or group
34 of employers are carrying their own insurance, on the
35 application of any person entitled to compensation and on
36 proof of default in the payment of any installment, the
37 division shall require the employer or group of employers to
38 furnish security for the payment of the compensation, and if
39 not given, all other compensation shall be commuted and
40 become immediately payable; provided, that employers engaged
41 in the mining business shall be required to insure only
42 their liability hereunder to the extent of the equivalent of
43 the maximum liability under this chapter for ten deaths in
44 any one accident, but the employer or group of employers may
45 carry their own risk for any excess liability. When a group
46 of employers enter into an agreement to pool their
47 liabilities under this chapter, individual members will not
48 be required to qualify as individual self-insurers.

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

56 employer's claims history to an approved advisory
57 organization.

58 3. For every entity qualified to group self-insure
59 their liability pursuant to this chapter or chapter 537,
60 each entity shall not authorize total discounts for any
61 individual member exceeding twenty-five percent beginning
62 January 1, 1999. All discounts shall be based on objective
63 quantitative factors and applied uniformly to all trust
64 members.

65 4. Any group of employers that have qualified to self-
66 insure their liability pursuant to this chapter shall file
67 with the division premium rates, based on pure premium rate
68 data, adjusted for loss development and loss trending as
69 filed by the advisory organization with the department of
70 commerce and insurance pursuant to section 287.975, plus any
71 estimated expenses and other factors or based on average
72 rate classifications calculated by the department of
73 commerce and insurance as taken from the premium rates filed
74 by the twenty insurance companies providing the greatest
75 volume of workers' compensation insurance coverage in this
76 state. The rate is inadequate if funds equal to the full
77 ultimate cost of anticipated losses and loss adjustment
78 expenses are not produced when the prospective loss costs
79 are applied to anticipated payrolls. The provisions of this
80 subsection shall not apply to those political subdivisions
81 of this state that have qualified to self-insure their
82 liability pursuant to this chapter as authorized by section
83 537.620 on an assessment plan. Any such group may file with
84 the division a composite rate for all coverages provided
85 under that section.

86 5. When considering applications for new trust self-
87 insurers, as described under 8 CSR 50- 3.010, the division

88 shall require proof of payment by each member of not less
89 than twenty-five percent of the estimated annual premium;
90 except that, for new members who wish to join an existing
91 trust self-insurer during the policy year rather than at the
92 beginning of the policy year, the division shall require
93 proof of payment of the lesser of the estimated premium of
94 three months or the estimated premium for the balance of the
95 policy year.

96 6. Self-insured trusts, as described under 8 CSR 50-
97 3.010, may invest surplus moneys from a prior trust year not
98 needed for current obligations. Notwithstanding any
99 provision of law to the contrary, upon approval by the
100 division, a self-insured trust may invest up to one hundred
101 percent of surplus moneys in securities designated by the
102 state treasurer as acceptable collateral to secure state
103 deposits under section 30.270.

104 7. Any finding or determination made by the division
105 under this section may be reviewed as provided in sections
106 287.470 and 287.480.

107 8. **If a group of employers who have been granted self-**
108 **insurance authority under this chapter or chapter 537 or a**
109 **public sector individual employer granted self-insurance**
110 **authority under this chapter is deemed insolvent, determined**
111 **to be insolvent, or files for bankruptcy, and fails to pay**
112 **any of its obligations that are owed to an injured employee**
113 **or such employee's dependents under this chapter, whether**
114 **based upon a compromise settlement approved under section**
115 **287.390 or based upon an award issued under this chapter,**
116 **the division shall call upon the entire security posted by**
117 **the group of employers or public sector individual**
118 **employer. The division may refer all known losses or cases**
119 **of the group of employers or public sector individual**

120 employer to a third-party administrator or any such entity
121 authorized in the state of Missouri to administer the
122 workers' compensation cases. The third-party administrator
123 or entity to which the losses are transferred shall have the
124 authority to receive the security proceeds from the division
125 and use the proceeds, after deducting reasonable
126 administrative expenses, to pay the compensation benefits
127 owed under this chapter. The security proceeds shall not be
128 considered state property and shall not be subject to
129 appropriation by the general assembly. Any unused portion
130 of the security proceeds shall be returned to the division.
131 The group of employers or public sector individual employer
132 may apply to the division for release of the unused portion
133 of the security proceeds as set forth in the rules
134 promulgated by the division pursuant to this section.
135 Neither the division nor any third-party administrator shall
136 be obligated or required to pay any obligations or moneys in
137 an amount in excess of the security proceeds, and neither
138 the division nor any third-party administrator shall be
139 liable for any interest or penalties. The joint and several
140 liability of the members of a group that is deemed
141 insolvent, determined to be insolvent, or that files for
142 bankruptcy shall continue and shall not be terminated by
143 payment of benefits under this subsection.

144 9. No rule or portion of a rule promulgated under the
145 authority of this section shall become effective unless it
146 has been promulgated pursuant to the provisions of section
147 536.024.

148 [9.] 10. Any records submitted pursuant to this
149 section, and pursuant to any rule promulgated by the
150 division pursuant to this section, shall be considered
151 confidential and not subject to chapter 610. Any party to a

152 workers' compensation case involving the party that
153 submitted the records shall be able to subpoena the records
154 for use in a workers' compensation case, if the information
155 is otherwise relevant.

287.480. 1. If an application for review is made to
2 the commission within twenty days from the date of the
3 award, the full commission, if the first hearing was not
4 held before the full commission, shall review the evidence,
5 or, if considered advisable, as soon as practicable hear the
6 parties at issue, their representatives and witnesses and
7 shall make an award and file it in like manner as specified
8 in section 287.470. Any notice of appeal, application or
9 other paper required under this law to be filed with the
10 division or the commission shall, when mailed to or
11 transmitted by electronic facsimile meeting the requirements
12 of the division and received by the division or the
13 commission, be deemed to be filed as of the date endorsed by
14 the United States post office on the envelope or container
15 in which such paper is received, or the date received if
16 filed by facsimile. In instances where the last day for the
17 filing of any such paper falls on a Sunday or legal holiday,
18 the filing shall be deemed timely if accomplished on the
19 next day subsequent which is neither a Sunday or a legal
20 holiday. When filing by electronic facsimile meeting the
21 requirements of the division, the parties shall, on the same
22 date as the facsimile transmission, mail by the United
23 States mail the original and the requisite number of copies
24 to the commission. **In addition, the commission may allow**
25 **filing of applications for review, briefs, motions, and**
26 **other requests for relief with the commission by electronic**
27 **means, in such manner as the commission may, by rule,**
28 **prescribe.**

29 2. An employer who has been determined by the division
30 to be an employer subject to and operating pursuant to this
31 chapter and has also been determined to be uninsured may
32 file an application for review but such application for
33 review shall be accompanied with and attached to the
34 application for review a bond which shall be conditioned for
35 the satisfaction of the award in full, and if for any reason
36 the appeal is dismissed or if the award is affirmed or
37 modified, to satisfy in full such modification of the award
38 as the commission may award. The surety on such bond shall
39 be a bank, savings and loan institution or an insurance
40 company licensed to do business in the state of Missouri.
41 No appeal to the commission shall be considered filed unless
42 accompanied by such bond and such bond shall also be a
43 prerequisite for appeal as provided in section 287.495 and
44 such appeal pursuant to section 287.495 shall not be
45 considered filed unless accompanied by such bond. If any
46 other employer pursuant to section 287.040 would be liable,
47 the employee shall be paid benefits from the bond until the
48 bond is exhausted before the section 287.040 employer is
49 required to pay.

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