

FIRST REGULAR SESSION

# SENATE BILL NO. 420

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0612S.011

## AN ACT

To repeal sections 287.141, 287.150, 287.210, 287.220, 287.266, 287.280, 287.310, 287.430, 287.710, 287.713, and 287.715, RSMo, and to enact in lieu thereof eight new sections relating to the second injury fund.

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

Section A. Sections 287.141, 287.150, 287.210, 287.220, 287.266, 287.280, 287.310, 287.430, 287.710, 287.713, and 287.715, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 287.141, 287.150, 287.210, 287.266, 287.280, 287.310, 287.430, and 287.710, to read as follows:

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

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and physical restoration services. No facility or institution shall be considered as qualified unless it is equipped to provide physical rehabilitation

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

17 services for persons suffering either from some specialized type of disability or  
18 general type of disability within the field of industrial injury, and unless such  
19 facility or institution is operated under the supervision of a physician qualified  
20 to render physical rehabilitation service and is staffed with trained and qualified  
21 personnel and has received a certificate of qualification from the division of  
22 workers' compensation. No physician shall be considered as qualified unless he  
23 has had the experience prescribed by the division.

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

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

43           5. If the parties disagree as to such physical rehabilitation treatment,  
44 where such treatment appears necessary, then either the employee, the employer,  
45 or insurer may file a request with the division of workers' compensation for an  
46 order for physical rehabilitation and the director of the division shall hear the  
47 parties within ten days after the filing of the request. The director of the division  
48 shall forthwith notify the parties of the time and place of the hearing, and the  
49 hearing shall be held at a place to be designated at the discretion of the  
50 division. The director of the division may conduct such hearing or he may direct  
51 one of the administrative law judges to conduct same. Such hearing shall be  
52 informal in all respects. The director of the division shall, after considering all

53 evidence at such hearing, within ten days make his order in the matter, either  
54 denying such request or ordering the employer or insurer within a reasonable  
55 time, to furnish physical rehabilitation, and ordering the employee to accept the  
56 same, at the expense of the employer or insurer. When the order requires  
57 physical rehabilitation, it shall also include an order to requisition the payment  
58 of forty dollars per week out of the [second injury] **workers' compensation**  
59 fund in the state treasury to the injured employee during such time as such  
60 employee is actually receiving physical rehabilitation.

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

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

68           8. An appeal from any order of the division of workers' compensation  
69 hereby created to the appellate court may be taken and governed in all respects  
70 in the same manner as appeals in workers' compensation cases generally under  
71 section 287.495.

287.150. 1. Where a third person is liable to the employee or to the  
2 dependents, for the injury or death, the employer shall be subrogated to the right  
3 of the employee or to the dependents against such third person, and the recovery  
4 by such employer shall not be limited to the amount payable as compensation to  
5 such employee or dependents, but such employer may recover any amount which  
6 such employee or his dependents would have been entitled to recover. Any  
7 recovery by the employer against such third person shall be apportioned between  
8 the employer and employee or his dependents using the provisions of subsections  
9 2 and 3 of this section.

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

18 subsection 3 of this section relating to comparative fault of the employee.

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

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

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

42           4. In any case in which an injured employee has been paid benefits from  
43 the [second injury] **workers' compensation** fund as provided in subsection 3  
44 of section 287.141, and recovery is had against the third party liable to the  
45 employee for the injury, the [second injury] **workers' compensation** fund shall  
46 be subrogated to the rights of the employee against said third party to the extent  
47 of the payments made to him from such fund, subject to provisions of subsections  
48 2 and 3 of this section.

49           5. No construction design professional who is retained to perform  
50 professional services on a construction project or any employee of a construction  
51 design professional who is assisting or representing the construction design  
52 professional in the performance of professional services on the site of the  
53 construction project shall be liable for any injury resulting from the employer's

54 failure to comply with safety standards on a construction project for which  
55 compensation is recoverable under the workers' compensation law, unless  
56 responsibility for safety practices is specifically assumed by contract. The  
57 immunity provided by this subsection to any construction design professional  
58 shall not apply to the negligent preparation of design plans or specifications.

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

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 insurer, the commission, the division or an  
4 administrative law judge, the time and place of which shall be fixed with due  
5 regard to the convenience of the employee and his physical condition and ability  
6 to attend. The employee may have his own physician present, and if the  
7 employee refuses to submit to the examination, or in any way obstructs it, his  
8 right to compensation shall be forfeited during such period unless in the opinion  
9 of the commission the circumstances justify the refusal or obstruction.

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

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

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

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

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

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

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

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

          287.266. 1. As used in this section, the following terms mean:

2           (1) "Provider", any individual, corporation, public or private entity that  
3 has entered into an agreement with the state to provide any service set out in  
4 section 208.152 and subsequent amendments;

5           (2) "Person eligible for public assistance", any individual who is or was  
6 eligible for medical assistance under the laws of this state.

7           2. Payments made to or on behalf of a person eligible for public assistance  
8 as the result of any compensable injury, occupational disease or disability as  
9 defined by this chapter shall be a debt due the state, and recovery of same shall  
10 be a recognized action pursuant to this chapter.

11           3. The state shall have a lien upon any funds owed by any employer that  
12 are or might be due under any insurance agreement or self-insurance authority  
13 in effect at the time the medical expense or any portion thereof was paid by the  
14 department of social services or its designated division.

15           4. The state shall have a right of subrogation to any funds owed to or  
16 received by the employee or any person, corporation, public agency or private  
17 agency acting on his behalf notwithstanding any other provisions of this chapter.

18           5. The department of social services or its designated division may  
19 maintain an appropriate action to recover funds due under this section pursuant  
20 to the workers' compensation law [or the second injury fund], which includes the  
21 exercise of all appeal rights afforded by the laws of this state.

22           6. The department shall have a right to recover the full amount of its  
23 payments when payments are made to a provider under this chapter if the  
24 payments were made on behalf of a person eligible for public assistance for an  
25 injury, occupational disease, or disability which is compensable under this  
26 chapter.

27           7. This debt due the state shall be subordinate only to the fee rights of the  
28 injured employee's attorney pursuant to this chapter, and the state shall not be  
29 required to pay any portion of the fees or costs incurred by the employee or the  
30 employer.

31           8. Application for and acceptance of public assistance made to or on behalf  
32 of the injured employee shall constitute an assignment of rights to the  
33 department of social services for reimbursement of funds expended by the



34 department of social services in the treatment of a compensable injury.

35           9. The attorney shall notify the department of social services upon  
36 representation of each client who was eligible for public assistance as provided  
37 by sections 208.151 to 208.159 and section 208.162 prior to, during or subsequent  
38 to the date of injury, that the attorney was retained to pursue the client's legal  
39 rights related to the compensable injury.

40           10. The administrative law judge, pursuant to authority granted under  
41 section 287.610, shall apportion the debt due the state between the injured  
42 worker and the injured worker's employer or their designated representatives  
43 when an agreement cannot be reached regarding the respective liability for money  
44 expended by the department of social services on behalf of the injured employee,  
45 but in no case shall the debt due the state be reduced.

287.280. 1. Every employer subject to the provisions of this chapter shall,  
2 on either an individual or group basis, insure his entire liability thereunder,  
3 except as hereafter provided, with some insurance carrier authorized to insure  
4 such liability in this state, except that an employer or group of employers may  
5 themselves carry the whole or any part of the liability without insurance upon  
6 satisfying the division of their ability so to do. If an employer or group of  
7 employers have qualified to self-insure their liability under this chapter, the  
8 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  
10 provisions of this chapter with intent to defraud their employees of their right to  
11 compensation, suspend or revoke the right of the employer or group of employers  
12 to self-insure their liability. If the employer or group of employers fail to comply  
13 with this section, an injured employee or his dependents may elect after the  
14 injury either to bring an action against such employer or group of employers to  
15 recover damages for personal injury or death and it shall not be a defense that  
16 the injury or death was caused by the negligence of a fellow servant, or that the  
17 employee had assumed the risk of the injury or death, or that the injury or death  
18 was caused to any degree by the negligence of the employee; or to recover under  
19 this chapter with the compensation payments commuted and immediately  
20 payable[; or, if the employee elects to do so, he or she may file a request with the  
21 division for payment to be made for medical expenses out of the second injury  
22 fund as provided in subsection 5 of section 287.220]. If the employer or group of  
23 employers are carrying their own insurance, on the application of any person  
24 entitled to compensation and on proof of default in the payment of any

25 installment, the division shall require the employer or group of employers to  
26 furnish security for the payment of the compensation, and if not given, all other  
27 compensation shall be commuted and become immediately payable; provided, that  
28 employers engaged in the mining business shall be required to insure only their  
29 liability hereunder to the extent of the equivalent of the maximum liability under  
30 this chapter for ten deaths in any one accident, but the employer or group of  
31 employers may carry their own risk for any excess liability. When a group of  
32 employers enter into an agreement to pool their liabilities under this chapter,  
33 individual members will not be required to qualify as individual self-insurers.

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

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

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

61           5. Any finding or determination made by the division under this section  
62 may be reviewed as provided in sections 287.470 and 287.480.

63           6. No rule or portion of a rule promulgated under the authority of this  
64 section shall become effective unless it has been promulgated pursuant to the  
65 provisions of section 536.024.

66           7. Any records submitted pursuant to this section, and pursuant to any  
67 rule promulgated by the division pursuant to this section, shall be considered  
68 confidential and not subject to chapter 610. Any party to a workers'  
69 compensation case involving the party that submitted the records shall be able  
70 to subpoena the records for use in a workers' compensation case, if the  
71 information is otherwise relevant.

287.310. 1. Every policy of insurance against liability under this chapter  
2 shall be in accordance with the provisions of this chapter and shall be in a form  
3 approved by the director of the department of insurance, financial institutions  
4 and professional registration. Such policy shall contain an agreement that the  
5 insurer accepts all of the provisions of this chapter, that the same may be  
6 enforced by any person entitled to any rights under this chapter as well as by the  
7 employer, that the insurer shall be a party to all agreements or proceedings  
8 under this chapter, and his appearance may be entered therein and jurisdiction  
9 over his person may be obtained as in this chapter provided, and such covenants  
10 shall be enforceable notwithstanding any default of the employer.

11           2. Any insurer issuing a workers' compensation policy may offer, as a part  
12 of the policy or as an optional endorsement to the policy, a deductible plan or  
13 plans to allow the insured employer to self-insure for the deductible amount,  
14 subject to the approval of the director of the department of insurance, financial  
15 institutions and professional registration. No deductible plan shall be approved  
16 which permits, directly or indirectly, any part of the deductible to be charged to  
17 or passed on to an employee of the insured employer.

18           3. Any deductible plan authorized under this section may provide for the  
19 agreement between the insurer and the insured employer regarding the  
20 conditions under which the employer shall be responsible for the payment of any  
21 deductible amount to the person or health care provider entitled to such payment  
22 pursuant to this chapter, except that no deductible plan shall be approved unless  
23 the insurer shall retain the ultimate responsibility for the payment of  
24 compensable claims. Where the agreement provides for the payment of the  
25 deductible amount by the insurer, the insurer shall pay all the deductible amount

26 applicable to a compensable claim directly to the person or health care provider  
27 entitled to the benefit pursuant to this chapter, and shall then be reimbursed by  
28 the insured employer for such payments. The insured employer shall be liable  
29 to the insurer up to the limit of the deductible, and any failure on the part of the  
30 insured employer to provide such reimbursements shall be treated under the  
31 workers' compensation policy in the same manner as a nonpayment of  
32 premium. [An employer's failure to reimburse deductible amounts to the insurer  
33 shall not cause the unpaid amount to be paid from the second injury fund under  
34 section 287.220.] The insurer shall have the right to offset unpaid deductible  
35 amounts against unearned premiums, if any, in the event of a cancellation of the  
36 policy.

37 4. Deductible plans shall provide appropriate premium reductions, as  
38 approved by the director of the department of insurance, financial institutions  
39 and professional registration, to reflect the type and level of the deductible  
40 amount selected. Losses paid by the employer under the deductible shall be  
41 credited against the employer's experience modification while the deductible  
42 option is used, unless the employer exercises the right to purchase a gross  
43 reportable deductible plan.

44 5. An insurer shall not be required to offer a deductible if, as a result of  
45 a credit investigation, the insurer determines that the employer does not have the  
46 financial ability to be responsible for the payment of deductible amounts.

47 6. An insurer shall service and, if necessary, defend all claims that arise  
48 during the policy period, including those claims payable in whole or in part from  
49 the deductible amount.

50 7. No employer who self-insures for a deductible amount as provided in  
51 this section shall harass, discharge, or otherwise discriminate against any  
52 employee because the employee has taken any action or is considering taking  
53 action which might result in the insured employer being required to pay a  
54 deductible amount.

55 8. Any rating organization or advisory organization authorized by the  
56 provisions of section 287.330 may file on behalf of its members deductible plans  
57 for approval by the director of the department of insurance, financial institutions  
58 and professional registration.

59 9. In calculating the administrative surcharge owed pursuant to the  
60 provisions of this chapter for workers' compensation policies with deductible  
61 options, the administrative surcharge owed will be based upon the total

62 premiums, which would have been paid for the deductible credit portion of the  
63 policy. [The second injury fund surcharge owed by the employer who purchases  
64 a deductible policy will be assessed upon the total premiums which would have  
65 been paid in the absence of the deductible option.] The premium taxes owed  
66 pursuant to this chapter for workers' compensation policies with deductible  
67 options shall be assessed upon those total premiums paid upon the insurance  
68 policy excluding the deductible credit portion of the policy. The portion of the  
69 workers' compensation policy with a deductible option that is subject to an  
70 administrative surcharge shall not be subject to premium taxes, nor with respect  
71 to foreign insurance companies, the retaliatory tax imposed pursuant to section  
72 375.916.

73 10. The director of the department of insurance, financial institutions and  
74 professional registration shall, by rule, specify any data reporting requirements  
75 applicable to workers' compensation policies with deductible options.

287.430. [Except for a claim for recovery filed against the second injury  
2 fund,] No proceedings for compensation under this chapter shall be maintained  
3 unless a claim therefor is filed with the division within two years after the date  
4 of injury or death, or the last payment made under this chapter on account of the  
5 injury or death, except that if the report of the injury or the death is not filed by  
6 the employer as required by section 287.380, the claim for compensation may be  
7 filed within three years after the date of injury, death, or last payment made  
8 under this chapter on account of the injury or death. The filing of any form,  
9 report, receipt, or agreement, other than a claim for compensation, shall not toll  
10 the running of the periods of limitation provided in this section. The filing of the  
11 report of injury or death three years or more after the date of injury, death, or  
12 last payment made under this chapter on account of the injury or death, shall not  
13 toll the running of the periods of limitation provided in this section, nor shall  
14 such filing reactivate or revive the period of time in which a claim may be filed.  
15 [A claim against the second injury fund shall be filed within two years after the  
16 date of the injury or within one year after a claim is filed against an employer or  
17 insurer pursuant to this chapter, whichever is later.] In all other respects the  
18 limitations shall be governed by the law of civil actions other than for the  
19 recovery of real property, but the appointment of a conservator shall be deemed  
20 the termination of the legal disability from minority or disability as defined in  
21 chapter 475. The statute of limitations contained in this section is one of  
22 extinction and not of repose.

287.710. 1. Every such insurance carrier or self-insurer, on or before the  
2 first day of March of each year, shall make a return, verified by the affidavit of  
3 its president and secretary or other chief officers or agents, to the director of the  
4 department of insurance, financial institutions and professional registration,  
5 stating the amount of all such gross premiums or deposits and credits during the  
6 year ending on the thirty-first day of December, next preceding.

7 2. The amount of the tax due for each calendar year shall be paid in four  
8 approximately equal estimated quarterly installments, and a fifth reconciling  
9 installment. The first four installments shall be based upon the application of  
10 the current calendar year's tax rate to the premium for the immediately preceding  
11 taxable year ending on the thirty-first day of December, next preceding. The  
12 quarterly installments shall be made on the first day of March, the first day of  
13 June, the first day of September and the first day of December. Immediately  
14 after receiving certification from the director of the department of insurance,  
15 financial institutions and professional registration of the amount of tax due from  
16 the various companies or self-insurers, the director of revenue shall notify and  
17 assess each company or self-insurer the amount of taxes on its premiums for the  
18 calendar year ending on the thirty-first day of December, next preceding. The  
19 director of revenue shall also notify and assess each company or self-insurer the  
20 amount of the estimated quarterly installments to be made for the calendar year.  
21 If the amount of the actual tax due for any year exceeds the total of the  
22 installments made for such year, the balance of the tax due shall be paid on the  
23 first day of June of the year following, together with the regular quarterly  
24 payment due at that time. If the total amount of the tax actually due is less than  
25 the total amount of the installments actually paid, the amount by which the  
26 amount paid exceeds the amount due shall be credited against the tax for the  
27 following year and deducted from the quarterly installment otherwise due on the  
28 first day of June. If the March first quarterly installment made by a company or  
29 self-insurer is less than the amount assessed by the director of revenue, the  
30 difference will be due on June first, but no interest will accrue to the state on the  
31 difference unless the amount paid by the company or self-insurer is less than  
32 eighty percent of one-fourth of the total amount of tax assessed by the director of  
33 revenue for the immediately preceding taxable year.

34 3. Upon the receipt of the returns and verification by the director of the  
35 division of workers' compensation as to the percent of tax to be imposed, the  
36 director of the department of insurance, financial institutions and professional

37 registration shall certify the amount of tax due from the various insurance  
38 carriers or self-insurers on the basis and at the rate provided in section 287.690,  
39 and make a schedule thereof, duplicate copies of which, properly certified by the  
40 director, shall be filed in the offices of the revenue department, the state  
41 treasurer, and the division of workers' compensation on or before the thirtieth day  
42 of April of each year. If the taxes provided for in this section are not paid, the  
43 department of revenue shall certify the fact to the director of the department of  
44 insurance, financial institutions and professional registration who shall thereafter  
45 suspend the delinquent carriers of insurance or self-insurers from the further  
46 transaction of business in this state until the taxes are paid.

47 4. Upon receipt of the money all such moneys shall be deposited to the  
48 credit of the fund for the support of the division of workers' compensation.

49 5. The tax collected for implementing the workers' compensation fund, and  
50 any interest accruing thereon, under the police power of the state from those  
51 specified in sections 287.690, 287.715, and 287.730 shall be used for the purpose  
52 of making effective the law to relieve victims of industrial injuries from having  
53 individually to bear the burden of misfortune or becoming charges upon society  
54 and for the further purpose of providing for the physical rehabilitation of the  
55 victims of industrial injuries, and for no other purposes. It is hereby made the  
56 express duty of every person exercising any official authority or responsibility in  
57 and for the state of Missouri sacredly to safeguard and preserve all funds  
58 collected, and any interest accruing thereon, under and by virtue of sections  
59 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

60 6. The funds created by virtue of sections 287.220, 287.690, 287.715, and  
61 287.730 shall be exempt from the provisions of section 33.080, specifically as they  
62 relate to the transfer of fund balances and any interest thereon to the ordinary  
63 revenue, and the director of the division of workers' compensation may direct the  
64 state treasurer to invest all or part of these funds in interest-bearing accounts  
65 as provided in article IV, section 15 of the Constitution of the state of Missouri[,  
66 and any unexpended balance in the second injury fund at the end of any  
67 appropriation period shall be a credit in the second injury fund and shall be the  
68 amount of the fund at the beginning of the appropriation period next immediately  
69 following].

2 [287.220. 1. All cases of permanent disability where there  
3 has been previous disability shall be compensated as herein  
provided. Compensation shall be computed on the basis of the

4 average earnings at the time of the last injury. If any employee  
5 who has a preexisting permanent partial disability whether from  
6 compensable injury or otherwise, of such seriousness as to  
7 constitute a hindrance or obstacle to employment or to obtaining  
8 reemployment if the employee becomes unemployed, and the  
9 preexisting permanent partial disability, if a body as a whole  
10 injury, equals a minimum of fifty weeks of compensation or, if a  
11 major extremity injury only, equals a minimum of fifteen percent  
12 permanent partial disability, according to the medical standards  
13 that are used in determining such compensation, receives a  
14 subsequent compensable injury resulting in additional permanent  
15 partial disability so that the degree or percentage of disability, in  
16 an amount equal to a minimum of fifty weeks compensation, if a  
17 body as a whole injury or, if a major extremity injury only, equals  
18 a minimum of fifteen percent permanent partial disability, caused  
19 by the combined disabilities is substantially greater than that  
20 which would have resulted from the last injury, considered alone  
21 and of itself, and if the employee is entitled to receive  
22 compensation on the basis of the combined disabilities, the  
23 employer at the time of the last injury shall be liable only for the  
24 degree or percentage of disability which would have resulted from  
25 the last injury had there been no preexisting disability. After the  
26 compensation liability of the employer for the last injury,  
27 considered alone, has been determined by an administrative law  
28 judge or the commission, the degree or percentage of employee's  
29 disability that is attributable to all injuries or conditions existing  
30 at the time the last injury was sustained shall then be determined  
31 by that administrative law judge or by the commission and the  
32 degree or percentage of disability which existed prior to the last  
33 injury plus the disability resulting from the last injury, if any,  
34 considered alone, shall be deducted from the combined disability,  
35 and compensation for the balance, if any, shall be paid out of a  
36 special fund known as the second injury fund, hereinafter provided  
37 for. If the previous disability or disabilities, whether from  
38 compensable injury or otherwise, and the last injury together result  
39 in total and permanent disability, the minimum standards under



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

64 2. In all cases in which a recovery against the second injury  
65 fund is sought for permanent partial disability, permanent total  
66 disability, or death, the state treasurer as custodian thereof shall  
67 be named as a party, and shall be entitled to defend against the  
68 claim. The state treasurer, with the advice and consent of the  
69 attorney general of Missouri, may enter into compromise  
70 settlements as contemplated by section 287.390, or agreed  
71 statements of fact that would affect the second injury fund. All  
72 awards for permanent partial disability, permanent total disability,  
73 or death affecting the second injury fund shall be subject to the  
74 provisions of this chapter governing review and appeal. For all  
75 claims filed against the second injury fund on or after July 1, 1994,

76 the attorney general shall use assistant attorneys general except  
77 in circumstances where an actual or potential conflict of interest  
78 exists, to provide legal services as may be required in all claims  
79 made for recovery against the fund. Any legal expenses incurred  
80 by the attorney general's office in the handling of such claims,  
81 including, but not limited to, medical examination fees, expert  
82 witness fees, court reporter expenses, travel costs, and related legal  
83 expenses shall be paid by the fund.

84 Effective July 1, 1993, the payment of such legal expenses shall be  
85 contingent upon annual appropriations made by the general  
86 assembly, from the fund, to the attorney general's office for this  
87 specific purpose.

88 3. If more than one injury in the same employment causes  
89 concurrent temporary disabilities, compensation shall be payable  
90 only for the longest and largest paying disability.

91 4. If more than one injury in the same employment causes  
92 concurrent and consecutive permanent partial disability,  
93 compensation payments for each subsequent disability shall not  
94 begin until the end of the compensation period of the prior  
95 disability.

96 5. If an employer fails to insure or self-insure as required  
97 in section 287.280, funds from the second injury fund may be  
98 withdrawn to cover the fair, reasonable, and necessary expenses to  
99 cure and relieve the effects of the injury or disability of an injured  
100 employee in the employ of an uninsured employer, or in the case of  
101 death of an employee in the employ of an uninsured employer,  
102 funds from the second injury fund may be withdrawn to cover fair,  
103 reasonable, and necessary expenses in the manner required in  
104 sections 287.240 and 287.241. In defense of claims arising under  
105 this subsection, the treasurer of the state of Missouri, as custodian  
106 of the second injury fund, shall have the same defenses to such  
107 claims as would the uninsured employer. Any funds received by  
108 the employee or the employee's dependents, through civil or other  
109 action, must go towards reimbursement of the second injury fund,  
110 for all payments made to the employee, the employee's dependents,  
111 or paid on the employee's behalf, from the second injury fund

112 pursuant to this subsection. The office of the attorney general of  
113 the state of Missouri shall bring suit in the circuit court of the  
114 county in which the accident occurred against any employer not  
115 covered by this chapter as required in section 287.280.

116 6. Every three years the second injury fund shall have an  
117 actuarial study made to determine the solvency of the fund,  
118 appropriate funding level of the fund, and forecasted expenditures  
119 from the fund. The first actuarial study shall be completed prior  
120 to July 1, 1988. The expenses of such actuarial studies shall be  
121 paid out of the fund for the support of the division of workers'  
122 compensation.

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

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

133 9. Any employee who at the time a compensable  
134 work-related injury is sustained is employed by more than one  
135 employer, the employer for whom the employee was working when  
136 the injury was sustained shall be responsible for wage loss benefits  
137 applicable only to the earnings in that employer's employment and  
138 the injured employee shall be entitled to file a claim against the  
139 second injury fund for any additional wage loss benefits attributed  
140 to loss of earnings from the employment or employments where the  
141 injury did not occur, up to the maximum weekly benefit less those  
142 benefits paid by the employer in whose employment the employee  
143 sustained the injury. The employee shall be entitled to a total  
144 benefit based on the total average weekly wage of such employee  
145 computed according to subsection 8 of section 287.250. The  
146 employee shall not be entitled to a greater rate of compensation  
147 than allowed by law on the date of the injury. The employer for

148 whom the employee was working where the injury was sustained  
149 shall be responsible for all medical costs incurred in regard to that  
150 injury.]

[287.713. The director of the division of workers'  
2 compensation shall make and submit to the governor, on or before  
3 the first day of February, in each year, a report on the  
4 expenditures made from the second injury fund in each of the four  
5 categories of liability for the calendar year next preceding and shall  
6 make and prepare, as is required, budget requests for payments  
7 from the second injury fund.]

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

15 2. Beginning October 31, 2005, and each year thereafter,  
16 the director of the division of workers' compensation shall estimate  
17 the amount of benefits payable from the second injury fund during  
18 the following calendar year and shall calculate the total amount of  
19 the annual surcharge to be imposed during the following calendar  
20 year upon all workers' compensation policyholders and authorized  
21 self-insurers. The amount of the annual surcharge percentage to  
22 be imposed upon each policyholder and self-insured for the  
23 following calendar year commencing with the calendar year  
24 beginning on January 1, 2006, shall be set at and calculated  
25 against a percentage, not to exceed three percent, of the  
26 policyholder's or self-insured's workers' compensation net deposits,

27 net premiums, or net assessments for the previous policy year,  
28 rounded up to the nearest one-half of a percentage point, that shall  
29 generate, as nearly as possible, one hundred ten percent of the  
30 moneys to be paid from the second injury fund in the following  
31 calendar year, less any moneys contained in the fund at the end of  
32 the previous calendar year. All policyholders and self-insurers  
33 shall be notified by the division of workers' compensation within  
34 ten calendar days of the determination of the surcharge percent to  
35 be imposed for, and paid in, the following calendar year. The net  
36 premium equivalent for individual self-insured employers and any  
37 group of political subdivisions of this state qualified to self-insure  
38 their liability pursuant to this chapter as authorized by section  
39 537.620 shall be based on average rate classifications calculated by  
40 the department of insurance, financial institutions and professional  
41 registration as taken from premium rates filed by the twenty  
42 insurance companies providing the greatest volume of workers'  
43 compensation insurance coverage in this state. For employers  
44 qualified to self-insure their liability pursuant to this chapter, the  
45 rates filed by such group of employers in accordance with  
46 subsection 2 of section 287.280 shall be the net premium  
47 equivalent. The director may advance funds from the workers'  
48 compensation fund to the second injury fund if surcharge  
49 collections prove to be insufficient. Any funds advanced from the  
50 workers' compensation fund to the second injury fund must be  
51 reimbursed by the second injury fund no later than December  
52 thirty-first of the year following the advance. The surcharge shall  
53 be collected from policyholders by each insurer at the same time  
54 and in the same manner that the premium is collected, but no  
55 insurer or its agent shall be entitled to any portion of the  
56 surcharge as a fee or commission for its collection. The surcharge  
57 is not subject to any taxes, licenses or fees.

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

60 4. Such surcharge amounts shall be paid quarterly by  
61 insurers and self-insurers, and insurers shall pay the amounts not  
62 later than the thirtieth day of the month following the end of the

63 quarter in which the amount is received from policyholders. If the  
64 director of the division of workers' compensation fails to calculate  
65 the surcharge by the thirty-first day of October of any year for the  
66 following year, any increase in the surcharge ultimately set by the  
67 director shall not be effective for any calendar quarter beginning  
68 less than sixty days from the date the director makes such  
69 determination.

70 5. If a policyholder or self-insured fails to make payment of  
71 the surcharge or an insurer fails to make timely transfer to the  
72 division of surcharges actually collected from policyholders, as  
73 required by this section, a penalty of one-half of one percent of the  
74 surcharge unpaid, or untransferred, shall be assessed against the  
75 liable policyholder, self-insured or insurer. Penalties assessed  
76 under this subsection shall be collected in a civil action by a  
77 summary proceeding brought by the director of the division of  
78 workers' compensation.]

✓  
Bill

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