

FIRST REGULAR SESSION

[CORRECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 420

96TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, March 31, 2011, with recommendation that the Senate Committee Substitute do pass.

0612S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 287.141, 287.220, 287.280, and 287.715, RSMo, and to enact in lieu thereof four new sections relating to the second injury fund, with an emergency clause.

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

Section A. Sections 287.141, 287.220, 287.280, and 287.715, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.141, 287.220, 287.280, and 287.715, to read as follows:

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

9 2. The division of workers' compensation shall continuously study the
10 problems of physical rehabilitation and shall investigate all rehabilitation
11 facilities, both private and public, and upon such investigation shall approve as
12 qualified all such facilities, institutions and physicians as are capable of
13 rendering competent physical rehabilitation service for seriously injured
14 industrial workers. Rehabilitation facilities shall include medical, surgical,
15 hospital and physical restoration services. No facility or institution shall be

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

16 considered as qualified unless it is equipped to provide physical rehabilitation
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 fund in the state treasury to be paid to the employee while he
33 is actually being rehabilitated, and shall immediately notify the state treasurer
34 thereof by furnishing him with a copy of his order]. But in no case shall the
35 period of physical rehabilitation extend beyond twenty weeks except in unusual
36 cases and then only by a special order of the division of workers' compensation
37 for such additional period as the division may authorize.

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

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

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

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

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

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

287.220. 1. All cases of permanent disability where there has been
2 previous disability, **and when the injury causing the permanent disability**
3 **occurred prior to July 1, 2011**, shall be compensated as herein provided. **No**
4 **cases of permanent disability where there has been previous disability,**
5 **and when the injury causing the permanent disability occurred prior**
6 **to July 1, 2011, shall be filed against the second injury fund after July**
7 **1, 2013.** Compensation shall be computed on the basis of the average earnings
8 at the time of the last injury. If any employee who has a preexisting permanent
9 partial disability whether from compensable injury or otherwise, of such
10 seriousness as to constitute a hindrance or obstacle to employment or to obtaining
11 reemployment if the employee becomes unemployed, and the preexisting
12 permanent partial disability, if a body as a whole injury, equals a minimum of
13 fifty weeks of compensation or, if a major extremity injury only, equals a
14 minimum of fifteen percent permanent partial disability, according to the medical
15 standards that are used in determining such compensation, receives a subsequent
16 compensable injury resulting in additional permanent partial disability so that
17 the degree or percentage of disability, in an amount equal to a minimum of fifty

18 weeks compensation, if a body as a whole injury or, if a major extremity injury
19 only, equals a minimum of fifteen percent permanent partial disability, caused
20 by the combined disabilities is substantially greater than that which would have
21 resulted from the last injury, considered alone and of itself, and if the employee
22 is entitled to receive compensation on the basis of the combined disabilities, the
23 employer at the time of the last injury shall be liable only for the degree or
24 percentage of disability which would have resulted from the last injury had there
25 been no preexisting disability. After the compensation liability of the employer
26 for the last injury, considered alone, has been determined by an administrative
27 law judge or the commission, the degree or percentage of employee's disability
28 that is attributable to all injuries or conditions existing at the time the last injury
29 was sustained shall then be determined by that administrative law judge or by
30 the commission and the degree or percentage of disability which existed prior to
31 the last injury plus the disability resulting from the last injury, if any, considered
32 alone, shall be deducted from the combined disability, and compensation for the
33 balance, if any, shall be paid out of a special fund known as the second injury
34 fund, hereinafter provided for. If the previous disability or disabilities, whether
35 from compensable injury or otherwise, and the last injury together result in total
36 and permanent disability, the minimum standards under this subsection for a
37 body as a whole injury or a major extremity injury shall not apply and the
38 employer at the time of the last injury shall be liable only for the disability
39 resulting from the last injury considered alone and of itself; except that if the
40 compensation for which the employer at the time of the last injury is liable is less
41 than the compensation provided in this chapter for permanent total disability,
42 then in addition to the compensation for which the employer is liable and after
43 the completion of payment of the compensation by the employer, the employee
44 shall be paid the remainder of the compensation that would be due for permanent
45 total disability under section 287.200 out of a special fund known as the "Second
46 Injury Fund" hereby created exclusively for the purposes as in this section
47 provided and for special weekly benefits in rehabilitation cases as provided in
48 section 287.141. Maintenance of the second injury fund shall be as provided by
49 section 287.710. The state treasurer shall be the custodian of the second injury
50 fund which shall be deposited the same as are state funds and any interest
51 accruing thereon shall be added thereto. The fund shall be subject to audit the
52 same as state funds and accounts and shall be protected by the general bond
53 given by the state treasurer. Upon the requisition of the director of the division

54 of workers' compensation, warrants on the state treasurer for the payment of all
55 amounts payable for compensation and benefits out of the second injury fund
56 shall be issued. **For all injuries occurring on and after July 1, 2011,**
57 **compensation for the balance of the combined permanent disability**
58 **herein described shall no longer be payable by the second injury**
59 **fund. Instead, compensation for the balance of the combined**
60 **permanent disability herein described shall be payable by the employer**
61 **or its insurer, in addition to the permanent disability attributable to**
62 **the last injury alone.**

63 2. In all cases in which a recovery against the second injury fund is
64 sought for permanent partial disability, permanent total disability, or death, the
65 state treasurer as custodian thereof shall be named as a party, and shall be
66 entitled to defend against the claim. The state treasurer, with the advice and
67 consent of the attorney general of Missouri, may enter into compromise
68 settlements as contemplated by section 287.390 **in any amount not to exceed**
69 **the total sum of one hundred weeks of the employee's total average**
70 **weekly wage as of the date of the injury**, or agreed statements of fact that
71 would affect the second injury fund. **The state treasurer, with the advice**
72 **and consent of the attorney general of Missouri, may enter into**
73 **compromise settlements with dependents of claimants, whether finally**
74 **adjudicated or not, arising from the Missouri Supreme Court's decision**
75 **in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900 (Mo.2007).** All
76 awards for permanent partial disability, permanent total disability, or death
77 affecting the second injury fund shall be subject to the provisions of this chapter
78 governing review and appeal. For all claims filed against the second injury fund
79 on or after July 1, 1994, the attorney general shall use assistant attorneys
80 general except in circumstances where an actual or potential conflict of interest
81 exists, to provide legal services as may be required in all claims made for recovery
82 against the fund. Any legal expenses incurred by the attorney general's office in
83 the handling of such claims, including, but not limited to, medical examination
84 fees, expert witness fees, court reporter expenses, travel costs, and related legal
85 expenses shall be paid by the fund. Effective July 1, 1993, the payment of such
86 legal expenses shall be contingent upon annual appropriations made by the
87 general assembly, from the fund, to the attorney general's office for this specific
88 purpose.

89 3. If more than one injury in the same employment causes concurrent

90 temporary disabilities, compensation shall be payable only for the longest and
91 largest paying disability.

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

96 5. If an employer fails to insure or self-insure as required in section
97 287.280, funds from the second injury fund may be withdrawn to cover the fair,
98 reasonable, and necessary expenses **incurred relating to claims for injuries**
99 **occurring prior to July 1, 2011**, to cure and relieve the effects of the injury
100 or disability of an injured employee in the employ of an uninsured employer, or
101 in the case of death of an employee in the employ of an uninsured employer,
102 funds from the second injury fund may be withdrawn to cover fair, reasonable,
103 and necessary expenses **incurred relating to a death occurring prior to**
104 **July 1, 2011**, in the manner required in sections 287.240 and 287.241. In
105 defense of claims arising under this subsection, the treasurer of the state of
106 Missouri, as custodian of the second injury fund, shall have the same defenses to
107 such claims as would the uninsured employer. Any funds received by the
108 employee or the employee's dependents, through civil or other action, must go
109 towards reimbursement of the second injury fund, for all payments made to the
110 employee, the employee's dependents, or paid on the employee's behalf, from the
111 second injury fund pursuant to this subsection. The office of the attorney general
112 of the state of Missouri shall bring suit in the circuit court of the county in which
113 the accident occurred against any employer not covered by this chapter as
114 required in section 287.280.

115 6. Every [three years] **year, until no fund liabilities remain**, the
116 second injury fund shall have an actuarial study made to determine the solvency
117 of the fund **taking into consideration any existing balance carried**
118 **forward from a previous year**, appropriate funding level of the fund, and
119 forecasted expenditures from the fund. The first actuarial study shall be
120 completed prior to July 1, [1988] **2012**. The expenses of such actuarial studies
121 shall be 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 shall maintain the
124 financial data and records concerning the fund for the support of the division of
125 workers' compensation and the second injury fund. The division shall also

126 compile and report data on claims made pursuant to subsection 9 of this
127 section. The attorney general shall provide all necessary information to the
128 division for this purpose.

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

131 9. Any employee who at the time a compensable work-related injury is
132 sustained **prior to July 1, 2011**, is employed by more than one employer, the
133 employer for whom the employee was working when the injury was sustained
134 shall be responsible for wage loss benefits applicable only to the earnings in that
135 employer's employment and the injured employee shall be entitled to file a claim
136 against the second injury fund for any additional wage loss benefits attributed to
137 loss of earnings from the employment or employments where the injury did not
138 occur, up to the maximum weekly benefit less those benefits paid by the employer
139 in whose employment the employee sustained the injury. The employee shall be
140 entitled to a total benefit based on the total average weekly wage of such
141 employee computed according to subsection 8 of section 287.250. The employee
142 shall not be entitled to a greater rate of compensation than allowed by law on the
143 date of the injury. The employer for whom the employee was working where the
144 injury was sustained shall be responsible for all medical costs incurred in regard
145 to that injury.

146 **10. The division shall pay any liabilities of the fund in the**
147 **following priority:**

148 **(1) Expenses related to the legal defense of the fund, under**
149 **subsection 2 of this section;**

150 **(2) Permanent total disability awards in the order in which such**
151 **claims are settled or finally adjudicated;**

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

154 **(4) Medical expense incurred prior to July 1, 2011, under**
155 **subsection 5 of this section.**

156 **Such liabilities shall be paid to the extent the fund has a positive**
157 **balance. Any unpaid amounts shall remain an ongoing liability of the**
158 **fund until satisfied. No interest shall accrue on any outstanding**
159 **liabilities of the fund.**

160 **11. All cases of permanent disability where there has been**
161 **previous disability and when the injury causing the permanent**

162 **disability occurred on or after July 1, 2011, shall be subject to**
163 **adjudication under the workers' compensation system.**

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.

287.715. 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. **When all liabilities against the second injury fund have ended,**
49 **the director shall continue to collect the surcharge from all**
50 **policyholders and self-insurers for the remainder of the calendar year**
51 **and shall transfer any balance of the second injury fund on January 1**
52 **of the following year to the workers' compensation fund.**

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

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

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

70 **6. Notwithstanding subsection 2 of this section to the contrary,**
71 **on the effective date of this section, the division director shall transfer**

72 adequate funds from the workers' compensation fund to the second
73 injury fund to meet its current and anticipated legal obligations,
74 provide funds to settle cases, and provide funds for the administration
75 of the fund for the remainder of the 2011 fiscal year. Such transfer
76 shall not be of such size to jeopardize the solvency of the workers'
77 compensation fund. Such funds shall be repaid to the workers'
78 compensation fund on or before July 1, 2012, and shall be collected with
79 a supplemental surcharge during fiscal year 2012, and shall be
80 calculated in like manner as authorized in subsection 2 of this
81 section. All policyholders and self-insurers shall be notified by the
82 division of workers' compensation of the workers' compensation loan
83 surcharge percent to be imposed during 2011 as part of the notice
84 provided in subsection 7 of this section and for the portion of the
85 surcharge to be collected in 2012 as part of the notice provided in
86 subsection 2 of this section.

87 7. Notwithstanding subsection 2 of this section to the contrary,
88 in order to maintain the fiscal solvency of the second injury fund,
89 should the anticipated collections authorized in subsection 2 of this
90 section fail to be sufficient to meet its current and anticipated legal
91 obligations, provide funds to settle cases, and provide funds for the
92 administration of the fund for the first six months of fiscal year 2012,
93 the director of the division of workers' compensation as soon as
94 practical following the effective date of this section, shall estimate the
95 amount of benefits payable from the second injury fund during the first
96 six months of the 2012 fiscal year and shall calculate the total amount
97 of the supplemental surcharge to be imposed during such time upon all
98 workers' compensation policyholders and authorized self-insurers in
99 like manner as authorized in subsection 2 of this section. All
100 policyholders and self-insurers shall be notified by the division of
101 workers' compensation within ten calendar days of the determination
102 of the supplemental surcharge percent to be imposed for such period
103 of time.

104 8. In order to maintain the fiscal solvency of the second injury
105 fund, should the anticipated collections authorized in subsection 2 of
106 this section fail to be sufficient to meet its current and anticipated
107 legal obligations, provide funds to settle cases, and provide funds for
108 the administration of the fund for the following calendar year, the

109 **director of the division of workers' compensation, at the time of**
110 **estimating the amounts of benefits payable from the second injury fund**
111 **under subsection 2 of this section, shall determine the amount of**
112 **revenue so required. Notwithstanding subsection 2 of this section to**
113 **the contrary, such necessary funds as determined by the director shall**
114 **be collected with a supplemental surcharge calculated in like manner**
115 **as authorized in subsection 2 of this section. All policyholders and self-**
116 **insurers shall be notified by the division of workers' compensation of**
117 **the supplemental surcharge percent to be imposed for such period of**
118 **time as part of the notice provided in subsection 2 of this section.**

119 **9. Once the number of pending cases is reduced to the point**
120 **where the number of staff within the attorney general's office**
121 **defending the second injury fund can be reduced from July 2011 levels,**
122 **the attorney general shall begin reducing such staff in proportion to**
123 **the number of pending cases which remain.**

124 **10. Funds collected under the provisions of this chapter shall be**
125 **the sole funding source of the second injury fund.**

Section B. Because of the need to provide security for injured workers and
2 their employers and protect the solvency of the second injury fund, section A of
3 this act is deemed necessary for the immediate preservation of the public health,
4 welfare, peace and safety, and is hereby declared to be an emergency act within
5 the meaning of the constitution, and section A of this act shall be in full force and
6 effect upon its passage and approval.

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