

FIRST REGULAR SESSION

SENATE BILL NO. 373

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

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TERRY L. SPIELER, Secretary.

1806S.011

AN ACT

To repeal sections 287.120, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation.

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

Section A. Sections 287.120, 287.220, 287.690, and 287.715, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.120, 287.220, 287.690, and 287.715, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall
2 be liable, irrespective of negligence, to furnish compensation under the provisions
3 of this chapter for personal injury or death of the employee by accident arising
4 out of and in the course of the employee's employment, and shall be released from
5 all other liability therefor whatsoever, whether to the employee or any other
6 person. The term "accident" as used in this section shall include, but not be
7 limited to, injury or death of the employee caused by the unprovoked violence or
8 assault against the employee by any person.

9 2. The rights and remedies herein granted to an employee shall exclude
10 all other rights and remedies of the employee, his wife, her husband, parents,
11 personal representatives, dependents, heirs or next kin, at common law or
12 otherwise, on account of such accidental injury or death, except such rights and
13 remedies as are not provided for by this chapter.

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

18 4. Where the injury is caused by the failure of the employer to comply

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

19 with any statute in this state or any lawful order of the division or the
20 commission, the compensation and death benefit provided for under this chapter
21 shall be increased fifteen percent.

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

31 6. (1) Where the employee fails to obey any rule or policy adopted by the
32 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
33 controlled drugs in the workplace, the compensation and death benefit provided
34 for herein shall be reduced fifty percent if the injury was sustained in conjunction
35 with the use of alcohol or nonprescribed controlled drugs.

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

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

50 7. Where the employee's participation in a recreational activity or
51 program is the prevailing cause of the injury, benefits or compensation otherwise
52 payable under this chapter for death or disability shall be forfeited regardless
53 that the employer may have promoted, sponsored or supported the recreational
54 activity or program, expressly or impliedly, in whole or in part. The forfeiture of

55 benefits or compensation shall not apply when:

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

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

60 (3) The injury from such recreational activity or program occurs on the
61 employer's premises due to an unsafe condition and the employer had actual
62 knowledge of the employee's participation in the recreational activity or program
63 and of the unsafe condition of the premises and failed to either curtail the
64 recreational activity or program or cure the unsafe condition.

65 8. Mental injury resulting from work-related stress does not arise out of
66 and in the course of the employment, unless it is demonstrated that the stress is
67 work related and was extraordinary and unusual. The amount of work stress
68 shall be measured by objective standards and actual events.

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

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

76 **11. If an employee who is receiving compensation under this**
77 **chapter becomes incarcerated, such compensation shall be suspended**
78 **for the duration of the incarceration.**

79 **12. To be eligible to receive compensation under this chapter, an**
80 **employee must be entitled to legally work in the United States.**

287.220. 1. All cases of permanent disability where there has been
2 previous disability shall be compensated as herein provided. Compensation shall
3 be computed on the basis of the average earnings at the time of the last injury. If
4 any employee who has a preexisting permanent partial disability whether from
5 compensable injury or otherwise, of such seriousness as to constitute a hindrance
6 or obstacle to employment or to obtaining reemployment if the employee becomes
7 unemployed, and the preexisting permanent partial disability, if a body as a
8 whole injury, equals a minimum of fifty weeks of compensation or, if a major
9 extremity injury only, equals a minimum of fifteen percent permanent partial
10 disability, according to the medical standards that are used in determining such

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

47 added thereto. The fund shall be subject to audit the same as state funds and
48 accounts and shall be protected by the general bond given by the state
49 treasurer. Upon the requisition of the director of the division of workers'
50 compensation, warrants on the state treasurer for the payment of all amounts
51 payable for compensation and benefits out of the second injury fund shall be
52 issued.

53 2. In all cases in which a recovery against the second injury fund is
54 sought for permanent partial disability, permanent total disability, or death, the
55 state treasurer as custodian thereof shall be named as a party, and shall be
56 entitled to defend against the claim. The state treasurer, with the advice and
57 consent of the attorney general of Missouri, may enter into compromise
58 settlements as contemplated by section 287.390, or agreed statements of fact that
59 would affect the second injury fund. All awards for permanent partial disability,
60 permanent total disability, or death affecting the second injury fund shall be
61 subject to the provisions of this chapter governing review and appeal. For all
62 claims filed against the second injury fund on or after July 1, 1994, the attorney
63 general shall use assistant attorneys general except in circumstances where an
64 actual or potential conflict of interest exists, to provide legal services as may be
65 required in all claims made for recovery against the fund. Any legal expenses
66 incurred by the attorney general's office in the handling of such claims, including,
67 but not limited to, medical examination fees, expert witness fees, court reporter
68 expenses, travel costs, and related legal expenses shall be paid by the fund.
69 Effective July 1, 1993, the payment of such legal expenses shall be contingent
70 upon annual appropriations made by the general assembly, from the fund, to the
71 attorney general's office for this specific purpose.

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

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

79 5. If an employer fails to insure or self-insure as required in section
80 287.280, funds from the second injury fund may be withdrawn to cover the fair,
81 reasonable, and necessary expenses to cure and relieve the effects of the injury
82 or disability of an injured employee in the employ of an uninsured employer, or

83 in the case of death of an employee in the employ of an uninsured employer,
84 funds from the second injury fund may be withdrawn to cover fair, reasonable,
85 and necessary expenses in the manner required in sections 287.240 and 287.241.
86 In defense of claims arising under this subsection, the treasurer of the state of
87 Missouri, as custodian of the second injury fund, shall have the same defenses to
88 such claims as would the uninsured employer. Any funds received by the
89 employee or the employee's dependents, through civil or other action, must go
90 towards reimbursement of the second injury fund, for all payments made to the
91 employee, the employee's dependents, or paid on the employee's behalf, from the
92 second injury fund pursuant to this subsection. The office of the attorney general
93 of the state of Missouri shall bring suit in the circuit court of the county in which
94 the accident occurred against any employer not covered by this chapter as
95 required in section 287.280.

96 6. Every three years the second injury fund shall have an actuarial study
97 made to determine the solvency of the fund, appropriate funding level of the fund,
98 and forecasted expenditures from the fund. The first actuarial study shall be
99 completed prior to July 1, 1988. The expenses of such actuarial studies shall be
100 paid out of the fund for the support of the division of workers' compensation.

101 7. The director of the division of workers' compensation shall maintain the
102 financial data and records concerning the fund for the support of the division of
103 workers' compensation and the second injury fund. The division shall also
104 compile and report data on claims made pursuant to subsection 9 of this
105 section. The attorney general shall provide all necessary information to the
106 division for this purpose.

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

109 9. Any employee who at the time a compensable work-related injury is
110 sustained is employed by more than one employer, the employer for whom the
111 employee was working when the injury was sustained shall be responsible for
112 wage loss benefits applicable only to the earnings in that employer's employment
113 and the injured employee shall be entitled to file a claim against the second
114 injury fund for any additional wage loss benefits attributed to loss of earnings
115 from the employment or employments where the injury did not occur, up to the
116 maximum weekly benefit less those benefits paid by the employer in whose
117 employment the employee sustained the injury. The employee shall be entitled
118 to a total benefit based on the total average weekly wage of such employee

119 computed according to subsection 8 of section 287.250. The employee shall not
120 be entitled to a greater rate of compensation than allowed by law on the date of
121 the injury. The employer for whom the employee was working where the injury
122 was sustained shall be responsible for all medical costs incurred in regard to that
123 injury.

124 **10. No compensation shall be payable from the second injury**
125 **fund if the employee elects to pursue compensation under the workers'**
126 **compensation law of another state with jurisdiction over the employees'**
127 **injury or accident or occupational disease.**

128 **11. When an injured employee receives an award for permanent**
129 **total disability but by the use of glasses, prosthetic appliances, or**
130 **physical rehabilitation the employee is restored to his or her regular**
131 **work or its equivalent, the life payment shall be suspended during the**
132 **time in which the employee is restored to his or her regular work or its**
133 **equivalent. The employer and the division shall keep the file open in**
134 **the case during the lifetime of any injured employee who has received**
135 **an award of permanent total disability. In any case where the life**
136 **payment is suspended under this subsection, the commission may at**
137 **reasonable times review the case and either the employee or the**
138 **employer may request an informal conference with the commission**
139 **relative to the resumption of the employee's weekly life payment in the**
140 **case.**

141 **12. Notwithstanding the requirements of section 287.470, the life**
142 **payments to an injured employee made from the fund shall be**
143 **suspended when the employee is able to obtain suitable gainful**
144 **employment or be self-employed in view of the nature and severity of**
145 **the injury. The division shall promulgate rules setting forth a**
146 **reasonable standard means test to determine if such employment**
147 **warrants the suspension of benefits.**

148 **13. Notwithstanding the requirements of section 287.470, the**
149 **director may suspend, in whole or in part, the life payments to an**
150 **injured employee made from the fund when the employee becomes**
151 **eligible to receive Social Security benefits attributable to the**
152 **employee's injury. In no case shall the sum of the amount of monthly**
153 **payments from the fund and the monthly Social Security benefits**
154 **attributable to the employee's injury, be less than the monthly life**
155 **payments from the fund the employee has been receiving.**

287.690. 1. Prior to December 31, 1993, for the purpose of providing for
2 the expense of administering this chapter and for the purpose set out in
3 subsection 2 of this section, every person, partnership, association, corporation,
4 whether organized under the laws of this or any other state or country, the state
5 of Missouri, including any of its departments, divisions, agencies, commissions,
6 and boards or any political subdivisions of the state who self-insure or hold
7 themselves out to be any part self-insured, company, mutual company, the parties
8 to any interindemnity contract, or other plan or scheme, and every other
9 insurance carrier, insuring employers in this state against liability for personal
10 injuries to their employees, or for death caused thereby, under this chapter, shall
11 pay, as provided in this chapter, tax upon the net deposits, net premiums or net
12 assessments received, whether in cash or notes in this state, or on account of
13 business done in this state, for such insurance in this state at the rate of two
14 percent in lieu of all other taxes on such net deposits, net premiums or net
15 assessments, which amount of taxes shall be assessed and collected as herein
16 provided. Beginning October 31, 1993, and every year thereafter, the director of
17 the division of workers' compensation shall estimate the amount of revenue
18 required to administer this chapter and the director shall determine the rate of
19 tax to be paid in the following calendar year pursuant to this section commencing
20 with the calendar year beginning on January 1, 1994. If the balance of the fund
21 estimated to be on hand on December thirty-first of the year each tax rate
22 determination is made is less than one hundred ten percent of the previous year's
23 expenses plus any additional revenue required due to new statutory requirements
24 given to the division by the general assembly, then the director shall impose a tax
25 not to exceed two percent in lieu of all other taxes on net deposits, net premiums
26 or net assessments, rounded up to the nearest one-half of a percentage point,
27 which amount of taxes shall be assessed and collected as herein provided. The
28 net premium equivalent for individual self-insured employers and any group of
29 political subdivisions of this state qualified to self-insure their liability pursuant
30 to this chapter as authorized by section 537.620 shall be based on average rate
31 classifications calculated by the department of insurance, financial institutions
32 and professional registration as taken from premium rates filed by the twenty
33 insurance companies providing the greatest volume of workers' compensation
34 insurance coverage in this state. For employers qualified to self-insure their
35 liability pursuant to this chapter, the rates filed by such group of employers in
36 accordance with subsection 2 of section 287.280 shall be the net premium

37 equivalent. Every entity required to pay the tax imposed pursuant to this section
38 and section 287.730 shall be notified by the division of workers' compensation
39 within ten calendar days of the date of the determination of the rate of tax to be
40 imposed for the following year. Net premiums, net deposits or net assessments
41 are defined as gross premiums, gross deposits or gross assessments less canceled
42 or returned premiums, premium deposits or assessments and less dividends or
43 savings, actually paid or credited.

44 2. After January 1, 1994, the director of the division shall make one or
45 more loans to the Missouri employers mutual insurance company in an amount
46 not to exceed an aggregate amount of five million dollars from the fund
47 maintained to administer this chapter for start-up funding and initial
48 capitalization of the company. The board of the company shall make application
49 to the director for the loans, stating the amount to be loaned to the company. The
50 loans shall be for a term of five years and, at the time the application for such
51 loans is approved by the director, shall bear interest at the annual rate based on
52 the rate for linked deposit loans as calculated by the state treasurer pursuant to
53 section 30.758.

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

13 2. Beginning October 31, [2005] **2010**, and each year thereafter, the
14 director of the division of workers' compensation shall estimate the amount of
15 benefits payable from the second injury fund during the following calendar year
16 and shall calculate the total amount of the annual surcharge to be imposed
17 during the following calendar year upon all workers' compensation policyholders
18 and authorized self-insurers. The amount of the annual surcharge percentage to
19 be imposed upon each policyholder and self-insured for the following calendar

20 year commencing with the calendar year beginning on January 1, [2006] **2011**,
21 shall be set at and calculated against a percentage, not to exceed three percent,
22 of the policyholder's or self-insured's workers' compensation net deposits, net
23 premiums, or net assessments for the previous policy year, rounded up to the
24 nearest one-half of a percentage point, that shall generate, as nearly as possible,
25 one hundred ten percent of the moneys to be paid from the second injury fund in
26 the following calendar year, less any moneys contained in the fund at the end of
27 the previous [calendar] **fiscal** year. All policyholders and self-insurers shall be
28 notified by 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 **division** director may
40 advance [funds] **moneys** from the workers' compensation fund to the second
41 injury fund if surcharge collections prove to be insufficient. **The outstanding**
42 **total of moneys advanced by the division director from the workers'**
43 **compensation fund to the second injury fund shall not exceed thirty-**
44 **three and one-third percent of the total amount of the annual surcharge**
45 **as calculated in this section to be imposed in the year moneys are**
46 **advanced to the second injury fund.** Any [funds] **moneys** advanced from
47 the workers' compensation fund to the second injury fund [must] **shall** be
48 reimbursed by the second injury fund no later than December thirty-first of the
49 **fifth** year following the advance. The surcharge shall be collected from
50 policyholders by each insurer at the same time and in the same manner that the
51 premium is collected, but no insurer or its agent shall be entitled to any portion
52 of the surcharge as a fee or commission for its collection. The surcharge is not
53 subject to any taxes, licenses or fees.

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

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

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

71 **6. Funds collected under the provisions of this section shall be**
72 **the sole funding source of the second injury fund.**

Bill ✓

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