

CONFERENCE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
SENATE SUBSTITUTE NO. 2
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1

AN ACT

To repeal sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.280, 287.610, 287.715, 287.745, and 287.955, RSMo, and to enact in lieu thereof fourteen new sections relating to workers' compensation, with an existing penalty provision and an effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 287.020, 287.067, 287.120, 287.140,
2 287.150, 287.200, 287.210, 287.220, 287.280, 287.610, 287.715,
3 287.745, and 287.955, RSMo, are repealed and fourteen new
4 sections enacted in lieu thereof, to be known as sections
5 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210,
6 287.220, 287.223, 287.280, 287.610, 287.715, 287.745, and
7 287.955, to read as follows:

8 287.020. 1. The word "employee" as used in this chapter
9 shall be construed to mean every person in the service of any
10 employer, as defined in this chapter, under any contract of hire,
11 express or implied, oral or written, or under any appointment or
12 election, including executive officers of corporations. Except
13 as otherwise provided in section 287.200, any reference to any

1 employee who has been injured shall, when the employee is dead,
2 also include his dependents, and other persons to whom
3 compensation may be payable. The word "employee" shall also
4 include all minors who work for an employer, whether or not such
5 minors are employed in violation of law, and all such minors are
6 hereby made of full age for all purposes under, in connection
7 with, or arising out of this chapter. The word "employee" shall
8 not include an individual who is the owner, as defined in
9 subsection 43 of section 301.010, and operator of a motor vehicle
10 which is leased or contracted with a driver to a for-hire motor
11 carrier operating within a commercial zone as defined in section
12 390.020 or 390.041, or operating under a certificate issued by
13 the Missouri department of transportation or by the United States
14 Department of Transportation, or any of its subagencies. The
15 word "employee" also shall not include any person performing
16 services for board, lodging, aid, or sustenance received from any
17 religious, charitable, or relief organization.

18 2. The word "accident" as used in this chapter shall mean
19 an unexpected traumatic event or unusual strain identifiable by
20 time and place of occurrence and producing at the time objective
21 symptoms of an injury caused by a specific event during a single
22 work shift. An injury is not compensable because work was a
23 triggering or precipitating factor.

24 3. (1) In this chapter the term "injury" is hereby defined
25 to be an injury which has arisen out of and in the course of
26 employment. An injury by accident is compensable only if the
27 accident was the prevailing factor in causing both the resulting
28 medical condition and disability. "The prevailing factor" is

1 defined to be the primary factor, in relation to any other
2 factor, causing both the resulting medical condition and
3 disability.

4 (2) An injury shall be deemed to arise out of and in the
5 course of the employment only if:

6 (a) It is reasonably apparent, upon consideration of all
7 the circumstances, that the accident is the prevailing factor in
8 causing the injury; and

9 (b) It does not come from a hazard or risk unrelated to the
10 employment to which workers would have been equally exposed
11 outside of and unrelated to the employment in normal
12 nonemployment life.

13 (3) An injury resulting directly or indirectly from
14 idiopathic causes is not compensable.

15 (4) A cardiovascular, pulmonary, respiratory, or other
16 disease, or cerebrovascular accident or myocardial infarction
17 suffered by a worker is an injury only if the accident is the
18 prevailing factor in causing the resulting medical condition.

19 (5) The terms "injury" and "personal injuries" shall mean
20 violence to the physical structure of the body and to the
21 personal property which is used to make up the physical structure
22 of the body, such as artificial dentures, artificial limbs, glass
23 eyes, eyeglasses, and other prostheses which are placed in or on
24 the body to replace the physical structure and such disease or
25 infection as naturally results therefrom. These terms shall in
26 no case except as specifically provided in this chapter be
27 construed to include occupational disease in any form, nor shall
28 they be construed to include any contagious or infectious disease

1 contracted during the course of the employment, nor shall they
2 include death due to natural causes occurring while the worker is
3 at work.

4 4. "Death" when mentioned as a basis for the right to
5 compensation means only death resulting from such violence and
6 its resultant effects occurring within three hundred weeks after
7 the accident; except that in cases of occupational disease, the
8 limitation of three hundred weeks shall not be applicable.

9 5. Injuries sustained in company-owned or subsidized
10 automobiles in accidents that occur while traveling from the
11 employee's home to the employer's principal place of business or
12 from the employer's principal place of business to the employee's
13 home are not compensable. The extension of premises doctrine is
14 abrogated to the extent it extends liability for accidents that
15 occur on property not owned or controlled by the employer even if
16 the accident occurs on customary, approved, permitted, usual or
17 accepted routes used by the employee to get to and from their
18 place of employment.

19 6. The term "total disability" as used in this chapter
20 shall mean inability to return to any employment and not merely
21 mean inability to return to the employment in which the employee
22 was engaged at the time of the accident.

23 7. As used in this chapter and all acts amendatory thereof,
24 the term "commission" shall hereafter be construed as meaning and
25 referring exclusively to the labor and industrial relations
26 commission of Missouri, and the term "director" shall hereafter
27 be construed as meaning the director of the department of
28 insurance, financial institutions and professional registration

1 of the state of Missouri or such agency of government as shall
2 exercise the powers and duties now conferred and imposed upon the
3 department of insurance, financial institutions and professional
4 registration of the state of Missouri.

5 8. The term "division" as used in this chapter means the
6 division of workers' compensation of the department of labor and
7 industrial relations of the state of Missouri.

8 9. For the purposes of this chapter, the term "minor" means
9 a person who has not attained the age of eighteen years; except
10 that, for the purpose of computing the compensation provided for
11 in this chapter, the provisions of section 287.250 shall control.

12 10. In applying the provisions of this chapter, it is the
13 intent of the legislature to reject and abrogate earlier case law
14 interpretations on the meaning of or definition of "accident",
15 "occupational disease", "arising out of", and "in the course of
16 the employment" to include, but not be limited to, holdings in:
17 Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524
18 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852
19 (Mo.banc 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999)
20 and all cases citing, interpreting, applying, or following those
21 cases.

22 11. For the purposes of this chapter, "occupational
23 diseases due to toxic exposure" shall only include the following:
24 mesothelioma, asbestosis, berylliosis, coal worker's
25 pneumoconiosis, bronchiolitis obliterans, silicosis,
26 silicotuberculosis, manganism, acute myelogenous leukemia, and
27 myelodysplastic syndrome.

28 287.067. 1. In this chapter the term "occupational

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

12 2. An injury or death by occupational disease is
13 compensable only if the occupational exposure was the prevailing
14 factor in causing both the resulting medical condition and
15 disability. The "prevailing factor" is defined to be the primary
16 factor, in relation to any other factor, causing both the
17 resulting medical condition and disability. Ordinary, gradual
18 deterioration, or progressive degeneration of the body caused by
19 aging or by the normal activities of day-to-day living shall not
20 be compensable.

21 3. An injury due to repetitive motion is recognized as an
22 occupational disease for purposes of this chapter. An
23 occupational disease due to repetitive motion is compensable only
24 if the occupational exposure was the prevailing factor in causing
25 both the resulting medical condition and disability. The
26 "prevailing factor" is defined to be the primary factor, in
27 relation to any other factor, causing both the resulting medical
28 condition and disability. Ordinary, gradual deterioration, or

1 progressive degeneration of the body caused by aging or by the
2 normal activities of day-to-day living shall not be compensable.

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

8 5. "Radiation disability" is recognized as an occupational
9 disease for purposes of this chapter and is hereby defined to be
10 that disability due to radioactive properties or substances or to
11 Roentgen rays (X-rays) or exposure to ionizing radiation caused
12 by any process involving the use of or direct contact with radium
13 or radioactive properties or substances or the use of or direct
14 exposure to Roentgen rays (X-rays) or ionizing radiation.

15 6. Disease of the lungs or respiratory tract, hypotension,
16 hypertension, or disease of the heart or cardiovascular system,
17 including carcinoma, may be recognized as occupational diseases
18 for the purposes of this chapter and are defined to be disability
19 due to exposure to smoke, gases, carcinogens, inadequate oxygen,
20 of paid firefighters of a paid fire department or paid police
21 officers of a paid police department certified under chapter 590
22 if a direct causal relationship is established, or psychological
23 stress of firefighters of a paid fire department or paid peace
24 officers of a police department who are certified under chapter
25 590 if a direct causal relationship is established.

26 7. Any employee who is exposed to and contracts any
27 contagious or communicable disease arising out of and in the
28 course of his or her employment shall be eligible for benefits

1 under this chapter as an occupational disease.

2 8. With regard to occupational disease due to repetitive
3 motion, if the exposure to the repetitive motion which is found
4 to be the cause of the injury is for a period of less than three
5 months and the evidence demonstrates that the exposure to the
6 repetitive motion with the immediate prior employer was the
7 prevailing factor in causing the injury, the prior employer shall
8 be liable for such occupational disease.

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

26 2. The rights and remedies herein granted to an employee
27 shall exclude all other rights and remedies of the employee, his
28 wife, her husband, parents, personal representatives, dependents,

1 heirs or next kin, at common law or otherwise, on account of such
2 injury or death by accident or occupational disease, except such
3 rights and remedies as are not provided for by this chapter.

4 3. No compensation shall be allowed under this chapter for
5 the injury or death due to the employee's intentional
6 self-inflicted injury, but the burden of proof of intentional
7 self-inflicted injury shall be on the employer or the person
8 contesting the claim for allowance.

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

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

25 6. (1) Where the employee fails to obey any rule or policy
26 adopted by the employer relating to a drug-free workplace or the
27 use of alcohol or nonprescribed controlled drugs in the
28 workplace, the compensation and death benefit provided for herein

1 shall be reduced fifty percent if the injury was sustained in
2 conjunction with the use of alcohol or nonprescribed controlled
3 drugs.

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

9 (3) The voluntary use of alcohol to the percentage of blood
10 alcohol sufficient under Missouri law to constitute legal
11 intoxication shall give rise to a rebuttable presumption that the
12 voluntary use of alcohol under such circumstances was the
13 proximate cause of the injury. A preponderance of the evidence
14 standard shall apply to rebut such presumption. An employee's
15 refusal to take a test for alcohol or a nonprescribed controlled
16 substance, as defined by section 195.010, at the request of the
17 employer shall result in the forfeiture of benefits under this
18 chapter if the employer had sufficient cause to suspect use of
19 alcohol or a nonprescribed controlled substance by the claimant
20 or if the employer's policy clearly authorizes post-injury
21 testing.

22 7. Where the employee's participation in a recreational
23 activity or program is the prevailing cause of the injury,
24 benefits or compensation otherwise payable under this chapter for
25 death or disability shall be forfeited regardless that the
26 employer may have promoted, sponsored or supported the
27 recreational activity or program, expressly or impliedly, in
28 whole or in part. The forfeiture of benefits or compensation

1 shall not apply when:

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

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

6 (3) The injury from such recreational activity or program
7 occurs on the employer's premises due to an unsafe condition and
8 the employer had actual knowledge of the employee's participation
9 in the recreational activity or program and of the unsafe
10 condition of the premises and failed to either curtail the
11 recreational activity or program or cure the unsafe condition.

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

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

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

26 287.140. 1. In addition to all other compensation paid to
27 the employee under this section, the employee shall receive and
28 the employer shall provide such medical, surgical, chiropractic,

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

1 dispute arises as to what expenses shall be paid by the employer,
2 the matter shall be presented to the legal advisor, the
3 administrative law judge or the commission, who shall set the sum
4 to be paid and same shall be paid by the employer prior to the
5 medical examination. In no event, however, shall the employer or
6 its insurer be required to pay transportation costs for a greater
7 distance than two hundred fifty miles each way from place of
8 treatment.

9 2. If it be shown to the division or the commission that
10 the requirements are being furnished in such manner that there is
11 reasonable ground for believing that the life, health, or
12 recovery of the employee is endangered thereby, the division or
13 the commission may order a change in the physician, surgeon,
14 hospital or other requirement.

15 3. All fees and charges under this chapter shall be fair
16 and reasonable, shall be subject to regulation by the division or
17 the commission, or the board of rehabilitation in rehabilitation
18 cases. A health care provider shall not charge a fee for
19 treatment and care which is governed by the provisions of this
20 chapter greater than the usual and customary fee the provider
21 receives for the same treatment or service when the payor for
22 such treatment or service is a private individual or a private
23 health insurance carrier. The division or the commission, or the
24 board of rehabilitation in rehabilitation cases, shall also have
25 jurisdiction to hear and determine all disputes as to such
26 charges. A health care provider is bound by the determination
27 upon the reasonableness of health care bills.

28 4. The division shall, by regulation, establish methods to

1 resolve disputes concerning the reasonableness of medical
2 charges, services, or aids. This regulation shall govern
3 resolution of disputes between employers and medical providers
4 over fees charged, whether or not paid, and shall be in lieu of
5 any other administrative procedure under this chapter. The
6 employee shall not be a party to a dispute over medical charges,
7 nor shall the employee's recovery in any way be jeopardized
8 because of such dispute. Any application for payment of
9 additional reimbursement, as such term is used in 8 CSR 50-2.030,
10 as amended, shall be filed not later than:

11 (1) Two years from the date the first notice of dispute of
12 the medical charge was received by the health care provider if
13 such services were rendered before July 1, 2013; and

14 (2) One year from the date the first notice of dispute of
15 the medical charge was received by the health care provider if
16 such services were rendered after July 1, 2013. Notice shall be
17 presumed to occur no later than five business days after
18 transmission by certified United States mail.

19 5. No compensation shall be payable for the death or
20 disability of an employee, if and insofar as the death or
21 disability may be caused, continued or aggravated by any
22 unreasonable refusal to submit to any medical or surgical
23 treatment or operation, the risk of which is, in the opinion of
24 the division or the commission, inconsiderable in view of the
25 seriousness of the injury. If the employee dies as a result of
26 an operation made necessary by the injury, the death shall be
27 deemed to be caused by the injury.

28 6. The testimony of any physician or chiropractic physician

1 who treated the employee shall be admissible in evidence in any
2 proceedings for compensation under this chapter, subject to all
3 of the provisions of section 287.210.

4 7. Every hospital or other person furnishing the employee
5 with medical aid shall permit its record to be copied by and
6 shall furnish full information to the division or the commission,
7 the employer, the employee or his dependents and any other party
8 to any proceedings for compensation under this chapter, and
9 certified copies of the records shall be admissible in evidence
10 in any such proceedings.

11 8. The employer may be required by the division or the
12 commission to furnish an injured employee with artificial legs,
13 arms, hands, surgical orthopedic joints, or eyes, or braces, as
14 needed, for life whenever the division or the commission shall
15 find that the injured employee may be partially or wholly
16 relieved of the effects of a permanent injury by the use thereof.
17 The director of the division shall establish a procedure whereby
18 a claim for compensation may be reactivated after settlement of
19 such claim is completed. The claim shall be reactivated only
20 after the claimant can show good cause for the reactivation of
21 this claim and the claim shall be made only for the payment of
22 medical procedures involving life-threatening surgical procedures
23 or if the claimant requires the use of a new, or the
24 modification, alteration or exchange of an existing, prosthetic
25 device. For the purpose of this subsection, "life threatening"
26 shall mean a situation or condition which, if not treated
27 immediately, will likely result in the death of the injured
28 worker.

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

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

11 11. Any physician or other health care provider who orders,
12 directs or refers a patient for treatment, testing, therapy or
13 rehabilitation at any institution or facility shall, at or prior
14 to the time of the referral, disclose in writing if such health
15 care provider, any of his partners or his employer has a
16 financial interest in the institution or facility to which the
17 patient is being referred, to the following:

18 (1) The patient;

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

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

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

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

26 13. (1) No hospital, physician or other health care
27 provider, other than a hospital, physician or health care
28 provider selected by the employee at his own expense pursuant to

1 subsection 1 of this section, shall bill or attempt to collect
2 any fee or any portion of a fee for services rendered to an
3 employee due to a work-related injury or report to any credit
4 reporting agency any failure of the employee to make such
5 payment, when an injury covered by this chapter has occurred and
6 such hospital, physician or health care provider has received
7 actual notice given in writing by the employee, the employer or
8 the employer's insurer. Actual notice shall be deemed received
9 by the hospital, physician or health care provider five days
10 after mailing by certified mail by the employer or insurer to the
11 hospital, physician or health care provider.

12 (2) The notice shall include:

13 (a) The name of the employer;

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

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

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

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

19 (3) When an injury is found to be noncompensable under this
20 chapter, the hospital, physician or other health care provider
21 shall be entitled to pursue the employee for any unpaid portion
22 of the fee or other charges for authorized services provided to
23 the employee. Any applicable statute of limitations for an
24 action for such fees or other charges shall be tolled from the
25 time notice is given to the division by a hospital, physician or
26 other health care provider pursuant to subdivision (6) of this
27 subsection, until a determination of noncompensability in regard
28 to the injury which is the basis of such services is made, or in

1 the event there is an appeal to the labor and industrial
2 relations commission, until a decision is rendered by that
3 commission.

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

12 (5) If an employer or insurer fails to make payment for
13 authorized services provided to the employee by a hospital,
14 physician or other health care provider pursuant to this chapter,
15 the hospital, physician or other health care provider may proceed
16 pursuant to subsection 4 of this section with a dispute against
17 the employer or insurer for any fees or other charges for
18 services provided.

19 (6) A hospital, physician or other health care provider
20 whose services have been authorized in advance by the employer or
21 insurer may give notice to the division of any claim for fees or
22 other charges for services provided for a work-related injury
23 that is covered by this chapter, with copies of the notice to the
24 employee, employer and the employer's insurer. Where such notice
25 has been filed, the administrative law judge may order direct
26 payment from the proceeds of any settlement or award to the
27 hospital, physician or other health care provider for such fees
28 as are determined by the division. The notice shall be on a form

1 prescribed by the division.

2 14. The employer may allow or require an employee to use
3 any of the employee's accumulated paid leave, personal leave, or
4 medical or sick leave to attend to medical treatment, physical
5 rehabilitation, or medical evaluations during work time. The
6 intent of this subsection is to specifically supercede and
7 abrogate any case law that contradicts the express language of
8 this section.

9 287.150. 1. Where a third person is liable to the employee
10 or to the dependents, for the injury or death, the employer shall
11 be subrogated to the right of the employee or to the dependents
12 against such third person, and the recovery by such employer
13 shall not be limited to the amount payable as compensation to
14 such employee or dependents, but such employer may recover any
15 amount which such employee or his dependents would have been
16 entitled to recover. Any recovery by the employer against such
17 third person shall be apportioned between the employer and
18 employee or his dependents using the provisions of subsections 2
19 and 3 of this section.

20 2. When a third person is liable for the death of an
21 employee and compensation is paid or payable under this chapter,
22 and recovery is had by a dependent under this chapter either by
23 judgment or settlement for the wrongful death of the employee,
24 the employer shall have a subrogation lien on any recovery and
25 shall receive or have credit for sums paid or payable under this
26 chapter to any of the dependents of the deceased employee to the
27 extent of the settlement or recovery by such dependents for the
28 wrongful death. Recovery by the employer and credit for future

1 installments shall be computed using the provisions of subsection
2 3 of this section relating to comparative fault of the employee.

3 3. Whenever recovery against the third person is effected
4 by the employee or his dependents, the employer shall pay from
5 his share of the recovery a proportionate share of the expenses
6 of the recovery, including a reasonable attorney fee. After the
7 expenses and attorney fee have been paid, the balance of the
8 recovery shall be apportioned between the employer and the
9 employee or his dependents in the same ratio that the amount due
10 the employer bears to the total amount recovered if there is no
11 finding of comparative fault on the part of the employee, or the
12 total damages determined by the trier of fact if there is a
13 finding of comparative fault on the part of the employee.

14 Notwithstanding the foregoing provision, the balance of the
15 recovery may be divided between the employer and the employee or
16 his dependents as they may otherwise agree. Any part of the
17 recovery found to be due to the employer, the employee or his
18 dependents shall be paid forthwith and any part of the recovery
19 paid to the employee or his dependents under this section shall
20 be treated by them as an advance payment by the employer on
21 account of any future installments of compensation in the
22 following manner:

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

26 (2) A percentage of the amount paid to the employee or his
27 dependents equal to the percentage of fault assessed to the third
28 person from whom recovery is made shall be treated as an advance

1 payment if there is a finding of comparative fault on the part of
2 the employee.

3 4. In any case in which an injured employee has been paid
4 benefits from the second injury fund as provided in subsection 3
5 of section 287.141, and recovery is had against the third party
6 liable to the employee for the injury, the second injury fund
7 shall be subrogated to the rights of the employee against said
8 third party to the extent of the payments made to him from such
9 fund, subject to provisions of subsections 2 and 3 of this
10 section.

11 5. No construction design professional who is retained to
12 perform professional services on a construction project or any
13 employee of a construction design professional who is assisting
14 or representing the construction design professional in the
15 performance of professional services on the site of the
16 construction project shall be liable for any injury resulting
17 from the employer's failure to comply with safety standards on a
18 construction project for which compensation is recoverable under
19 the workers' compensation law, unless responsibility for safety
20 practices is specifically assumed by contract. The immunity
21 provided by this subsection to any construction design
22 professional shall not apply to the negligent preparation of
23 design plans or specifications.

24 6. Any provision in any contract or subcontract, where one
25 party is an employer in the construction group of code
26 classifications, which purports to waive subrogation rights
27 provided under this section in anticipation of a future injury or
28 death is hereby declared against public policy and void. Each

1 contract of insurance for workers' compensation shall require the
2 insurer to diligently pursue all subrogation rights of the
3 employer and shall require the employer to fully cooperate with
4 the insurer in pursuing such recoveries, except that the employer
5 may enter into compromise agreements with an insurer in lieu of
6 the insurer pursuing subrogation against another party. The
7 amount of any subrogation recovery by an insurer shall be
8 credited against the amount of the actual paid losses in the
9 determination of such employer's experience modification factor
10 within forty-five days of the collection of such amount.

11 7. Notwithstanding any other provision of this section,
12 when a third person or party is liable to the employee, to the
13 dependents of an employee, or to any person eligible to sue for
14 the employer's wrongful death as provided is section 537.080 in a
15 case where the employee suffers or suffered from an occupational
16 disease due to toxic exposure and the employee, dependents, or
17 persons eligible to sue for wrongful death are compensated under
18 this chapter, in no case shall the employer then be subrogated to
19 the rights of an employee, dependents, or persons eligible to sue
20 for wrongful death against such third person or party when the
21 occupational disease due to toxic exposure arose from the
22 employee's work for employer.

23 287.200. 1. Compensation for permanent total disability
24 shall be paid during the continuance of such disability for the
25 lifetime of the employee at the weekly rate of compensation in
26 effect under this subsection on the date of the injury for which
27 compensation is being made. The word "employee" as used in this
28 section shall not include the injured worker's dependents,

1 estate, or other persons to whom compensation may be payable as
2 provided in subsection 1 of section 287.020. The amount of such
3 compensation shall be computed as follows:

4 (1) For all injuries occurring on or after September 28,
5 1983, but before September 28, 1986, the weekly compensation
6 shall be an amount equal to sixty-six and two-thirds percent of
7 the injured employee's average weekly earnings during the year
8 immediately preceding the injury, as of the date of the injury;
9 provided that the weekly compensation paid under this subdivision
10 shall not exceed an amount equal to seventy percent of the state
11 average weekly wage, as such wage is determined by the division
12 of employment security, as of the July first immediately
13 preceding the date of injury;

14 (2) For all injuries occurring on or after September 28,
15 1986, but before August 28, 1990, the weekly compensation shall
16 be an amount equal to sixty-six and two-thirds percent of the
17 injured employee's average weekly earnings during the year
18 immediately preceding the injury, as of the date of the injury;
19 provided that the weekly compensation paid under this subdivision
20 shall not exceed an amount equal to seventy-five percent of the
21 state average weekly wage, as such wage is determined by the
22 division of employment security, as of the July first immediately
23 preceding the date of injury;

24 (3) For all injuries occurring on or after August 28, 1990,
25 but before August 28, 1991, the weekly compensation shall be an
26 amount equal to sixty-six and two-thirds percent of the injured
27 employee's average weekly earnings as of the date of the injury;
28 provided that the weekly compensation paid under this subdivision

1 shall not exceed an amount equal to one hundred percent of the
2 state average weekly wage;

3 (4) For all injuries occurring on or after August 28, 1991,
4 the weekly compensation shall be an amount equal to sixty-six and
5 two-thirds percent of the injured employee's average weekly
6 earnings as of the date of the injury; provided that the weekly
7 compensation paid under this subdivision shall not exceed an
8 amount equal to one hundred five percent of the state average
9 weekly wage;

10 (5) For all injuries occurring on or after September 28,
11 1981, the weekly compensation shall in no event be less than
12 forty dollars per week.

13 2. Permanent total disability benefits that have accrued
14 through the date of the injured employee's death are the only
15 permanent total disability benefits that are to be paid in
16 accordance with section 287.230. The right to unaccrued
17 compensation for permanent total disability of an injured
18 employee terminates on the date of the injured employee's death
19 in accordance with section 287.230, and does not survive to the
20 injured employee's dependents, estate, or other persons to whom
21 compensation might otherwise be payable.

22 3. All claims for permanent total disability shall be
23 determined in accordance with the facts. When an injured
24 employee receives an award for permanent total disability but by
25 the use of glasses, prosthetic appliances, or physical
26 rehabilitation the employee is restored to his regular work or
27 its equivalent, the life payment mentioned in subsection 1 of
28 this section shall be suspended during the time in which the

1 employee is restored to his regular work or its equivalent. The
2 employer and the division shall keep the file open in the case
3 during the lifetime of any injured employee who has received an
4 award of permanent total disability. In any case where the life
5 payment is suspended under this subsection, the commission may at
6 reasonable times review the case and either the employee or the
7 employer may request an informal conference with the commission
8 relative to the resumption of the employee's weekly life payment
9 in the case.

10 4. For all claims filed on or after the effective date of
11 this section for occupational diseases due to toxic exposure
12 which result in a permanent total disability or death, benefits
13 in this chapter shall be provided as follows:

14 (1) Notwithstanding any provision of law to the contrary,
15 such amount as due to the employee during said employee's life as
16 provided for under this chapter for an award of permanent total
17 disability and death, except such amount shall only be paid when
18 benefits under subdivision (2) and (3) of this subsection have
19 been exhausted;

20 (2) For occupational diseases due to toxic exposure, but
21 not including mesothelioma, an amount equal to two hundred
22 percent of the state's average weekly wage as of the date of
23 diagnosis for one hundred weeks paid by the employer; and

24 (3) In cases where occupational diseases due to toxic
25 exposure are diagnosed to be mesothelioma:

26 (a) For employers that have elected to accept mesothelioma
27 liability under this subsection, an additional amount of three
28 hundred percent of the state's average weekly wage for two

1 hundred twelve weeks shall be paid by the employer or group of
2 employers such employer is a member of. Employers that elect to
3 accept mesothelioma liability under this subsection may do so by
4 either insuring their liability, by qualifying as a self-insurer,
5 or by becoming a member of a group insurance pool. A group of
6 employers may enter into an agreement to pool their liabilities
7 under this subsection. If such group is joined, individual
8 members shall not be required to qualify as individual self-
9 insurers. Such group shall comply with section 287.223. In
10 order for an employer to make such an election, the employer
11 shall provide the department with notice of such an election in a
12 manner established by the department. The provisions of this
13 paragraph shall expire on December 31, 2038; or

14 (b) For employers who reject mesothelioma under this
15 subsection, then the exclusive remedy provisions under section
16 287.120 shall not apply to such liability. The provisions of
17 this paragraph shall expire on December 31, 2038; and

18 (4) The provisions of subdivision (2) and paragraph (a) of
19 subdivision (3) of this subsection shall not be subject to
20 suspension of benefits as provided in subsection 3 of this
21 section; and

22 (5) Notwithstanding any other provision of this chapter to
23 the contrary, should the employee die before the additional
24 benefits provided for in subdivision (2) and paragraph (a) of
25 subdivision (3) of this subsection are paid, the additional
26 benefits are payable to the employee's spouse or children,
27 natural or adopted, legitimate or illegitimate, in addition to
28 benefits provided under section 287.240. If there is no

1 surviving spouse or children and the employee has received less
2 than the additional benefits provided for in subdivision (2) and
3 paragraph (a) of subdivision (3) of this subsection the remainder
4 of such additional benefits shall be paid as a single payment to
5 the estate of the employee;

6 (6) The provisions of subdivision (1) of this subsection
7 shall not be construed to affect the employee's ability to obtain
8 medical treatment at the employer's expense or any other benefits
9 otherwise available under this chapter.

10 5. Any employee who obtains benefits under subdivision (2)
11 of subsection 4 of this section for acquiring asbestosis who
12 later obtains an award for mesothelioma, shall not receive more
13 benefits than such employee would receive having only obtained
14 benefits for mesothelioma under this section.

15 287.210. 1. After an employee has received an injury he
16 shall from time to time thereafter during disability submit to
17 reasonable medical examination at the request of the employer,
18 [his] the employer's insurer, the commission, the division [or],
19 an administrative law judge, or the attorney general on behalf of
20 the second injury fund if the employer has not obtained a medical
21 examination report, the time and place of which shall be fixed
22 with due regard to the convenience of the employee and his
23 physical condition and ability to attend. The employee may have
24 his own physician present, and if the employee refuses to submit
25 to the examination, or in any way obstructs it, his right to
26 compensation shall be forfeited during such period unless in the
27 opinion of the commission the circumstances justify the refusal
28 or obstruction.

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

13 3. The testimony of any physician who treated or examined
14 the injured employee shall be admissible in evidence in any
15 proceedings for compensation under this chapter, but only if the
16 medical report of the physician has been made available to all
17 parties as in this section provided. Immediately upon receipt of
18 notice from the division or the commission setting a date for
19 hearing of a case in which the nature and extent of an employee's
20 disability is to be determined, the parties or their attorneys
21 shall arrange, without charge or costs, each to the other, for an
22 exchange of all medical reports, including those made both by
23 treating and examining physician or physicians, to the end that
24 the parties may be commonly informed of all medical findings and
25 opinions. The exchange of medical reports shall be made at least
26 seven days before the date set for the hearing and failure of any
27 party to comply may be grounds for asking for and receiving a
28 continuance, upon proper showing by the party to whom the medical

1 reports were not furnished. If any party fails or refuses to
2 furnish the opposing party with the medical report of the
3 treating or examining physician at least seven days before such
4 physician's deposition or personal testimony at the hearing, as
5 in this section provided, upon the objection of the party who was
6 not provided with the medical report, the physician shall not be
7 permitted to testify at that hearing or by medical deposition.

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

11 5. As used in this chapter the terms "physician's report"
12 and "medical report" mean the report of any physician made on any
13 printed form authorized by the division or the commission or any
14 complete medical report. As used in this chapter the term
15 "complete medical report" means the report of a physician giving
16 the physician's qualifications and the patient's history,
17 complaints, details of the findings of any and all laboratory,
18 X-ray and all other technical examinations, diagnosis, prognosis,
19 nature of disability, if any, and an estimate of the percentage
20 of permanent partial disability, if any. An element or elements
21 of a complete medical report may be met by the physician's
22 records.

23 6. Upon the request of a party, the physician or physicians
24 who treated or are treating the injured employee shall be
25 required to furnish to the parties a rating and complete medical
26 report on the injured employee, at the expense of the party
27 selecting the physician, along with a complete copy of the
28 physician's clinical record including copies of any records and

1 reports received from other health care providers.

2 7. The testimony of a treating or examining physician may
3 be submitted in evidence on the issues in controversy by a
4 complete medical report and shall be admissible without other
5 foundational evidence subject to compliance with the following
6 procedures. The party intending to submit a complete medical
7 report in evidence shall give notice at least sixty days prior to
8 the hearing to all parties and shall provide reasonable
9 opportunity to all parties to obtain cross-examination testimony
10 of the physician by deposition. The notice shall include a copy
11 of the report and all the clinical and treatment records of the
12 physician including copies of all records and reports received by
13 the physician from other health care providers. The party
14 offering the report must make the physician available for
15 cross-examination testimony by deposition not later than seven
16 days before the matter is set for hearing, and each
17 cross-examiner shall compensate the physician for the portion of
18 testimony obtained in an amount not to exceed a rate of
19 reasonable compensation taking into consideration the specialty
20 practiced by the physician. Cross-examination testimony shall
21 not bind the cross-examining party. Any testimony obtained by
22 the offering party shall be at that party's expense on a
23 proportional basis, including the deposition fee of the
24 physician. Upon request of any party, the party offering a
25 complete medical report in evidence must also make available
26 copies of X rays or other diagnostic studies obtained by or
27 relied upon by the physician. Within ten days after receipt of
28 such notice a party shall dispute whether a report meets the

1 requirements of a complete medical report by providing written
2 objections to the offering party stating the grounds for the
3 dispute, and at the request of any party, the administrative law
4 judge shall rule upon such objections upon pretrial hearing
5 whether the report meets the requirements of a complete medical
6 report and upon the admissibility of the report or portions
7 thereof. If no objections are filed the report is admissible,
8 and any objections thereto are deemed waived. Nothing herein
9 shall prevent the parties from agreeing to admit medical reports
10 or records by consent. [The provisions of this subsection shall
11 not apply to claims against the second injury fund.]

12 8. Certified copies of the proceedings before any coroner
13 holding an inquest over the body of any employee receiving an
14 injury in the course of his employment resulting in death shall
15 be admissible in evidence in any proceedings for compensation
16 under this chapter, and it shall be the duty of the coroner to
17 give notice of the inquest to the employer and the dependents of
18 the deceased employee, who shall have the right to cross-examine
19 the witness.

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

23 287.220. 1. There is hereby created in the state treasury
24 a special fund to be known as the "Second Injury Fund" created
25 exclusively for the purposes as in this section provided and for
26 special weekly benefits in rehabilitation cases as provided in
27 section 287.141. Maintenance of the second injury fund shall be
28 as provided by section 287.710. The state treasurer shall be the

1 custodian of the second injury fund which shall be deposited the
2 same as are state funds and any interest accruing thereon shall
3 be added thereto. The fund shall be subject to audit the same as
4 state funds and accounts and shall be protected by the general
5 bond given by the state treasurer. Upon the requisition of the
6 director of the division of workers' compensation, warrants on
7 the state treasurer for the payment of all amounts payable for
8 compensation and benefits out of the second injury fund shall be
9 issued.

10 2. All cases of permanent disability where there has been
11 previous disability due to injuries occurring prior to the
12 effective date of this section shall be compensated as [herein]
13 provided in this subsection. Compensation shall be computed on
14 the basis of the average earnings at the time of the last injury.
15 If any employee who has a preexisting permanent partial
16 disability whether from compensable injury or otherwise, of such
17 seriousness as to constitute a hindrance or obstacle to
18 employment or to obtaining reemployment if the employee becomes
19 unemployed, and the preexisting permanent partial disability, if
20 a body as a whole injury, equals a minimum of fifty weeks of
21 compensation or, if a major extremity injury only, equals a
22 minimum of fifteen percent permanent partial disability,
23 according to the medical standards that are used in determining
24 such compensation, receives a subsequent compensable injury
25 resulting in additional permanent partial disability so that the
26 degree or percentage of disability, in an amount equal to a
27 minimum of fifty weeks compensation, if a body as a whole injury
28 or, if a major extremity injury only, equals a minimum of fifteen

1 percent permanent partial disability, caused by the combined
2 disabilities is substantially greater than that which would have
3 resulted from the last injury, considered alone and of itself,
4 and if the employee is entitled to receive compensation on the
5 basis of the combined disabilities, the employer at the time of
6 the last injury shall be liable only for the degree or percentage
7 of disability which would have resulted from the last injury had
8 there been no preexisting disability. After the compensation
9 liability of the employer for the last injury, considered alone,
10 has been determined by an administrative law judge or the
11 commission, the degree or percentage of employee's disability
12 that is attributable to all injuries or conditions existing at
13 the time the last injury was sustained shall then be determined
14 by that administrative law judge or by the commission and the
15 degree or percentage of disability which existed prior to the
16 last injury plus the disability resulting from the last injury,
17 if any, considered alone, shall be deducted from the combined
18 disability, and compensation for the balance, if any, shall be
19 paid out of a special fund known as the second injury fund,
20 hereinafter provided for. If the previous disability or
21 disabilities, whether from compensable injury or otherwise, and
22 the last injury together result in total and permanent
23 disability, the minimum standards under this subsection for a
24 body as a whole injury or a major extremity injury shall not
25 apply and the employer at the time of the last injury shall be
26 liable only for the disability resulting from the last injury
27 considered alone and of itself; except that if the compensation
28 for which the employer at the time of the last injury is liable

1 is less than the compensation provided in this chapter for
2 permanent total disability, then in addition to the compensation
3 for which the employer is liable and after the completion of
4 payment of the compensation by the employer, the employee shall
5 be paid the remainder of the compensation that would be due for
6 permanent total disability under section 287.200 out of [a
7 special fund known as the "Second Injury Fund" hereby created
8 exclusively for the purposes as in this section provided and for
9 special weekly benefits in rehabilitation cases as provided in
10 section 287.141. Maintenance of the second injury fund shall be
11 as provided by section 287.710. The state treasurer shall be the
12 custodian of the second injury fund which shall be deposited the
13 same as are state funds and any interest accruing thereon shall
14 be added thereto. The fund shall be subject to audit the same as
15 state funds and accounts and shall be protected by the general
16 bond given by the state treasurer. Upon the requisition of the
17 director of the division of workers' compensation, warrants on
18 the state treasurer for the payment of all amounts payable for
19 compensation and benefits out of the second injury fund shall be
20 issued.

21 2.] the second injury fund.

22 3. All claims against the second injury fund for injuries
23 occurring after the effective date of this section and all claims
24 against the second injury fund involving a subsequent compensable
25 injury which is an occupational disease filed after the effective
26 date of this section shall be compensated as provided in this
27 subsection.

28 (1) No claims for permanent partial disability occurring

1 after the effective date of this section shall be filed against
2 the second injury fund. Claims for permanent total disability
3 under section 287.200 against the second injury fund shall be
4 compensable only when the following conditions are met:

5 (a) a. An employee has a medically documented preexisting
6 disability equaling a minimum of fifty weeks of permanent partial
7 disability compensation according to the medical standards that
8 are used in determining such compensation which is:

9 i. A direct result of active military duty in any branch of
10 the United States armed forces; or

11 ii. A direct result of a compensable injury as defined in
12 section 287.020; or

13 iii. Not a compensable injury, but such preexisting
14 disability directly and significantly aggravates or accelerates
15 the subsequent work-related injury and shall not include
16 unrelated preexisting injuries or conditions that do not
17 aggravate or accelerate the subsequent work-related injury; or

18 iv. A preexisting permanent partial disability of an
19 extremity, loss of eyesight in one eye, or loss of hearing in one
20 ear, when there is a subsequent compensable work-related injury
21 as set forth in subparagraph b of the opposite extremity, loss of
22 eyesight in the other eye, or loss of hearing in the other ear;
23 and

24 b. Such employee thereafter sustains a subsequent
25 compensable work-related injury that, when combined with the
26 preexisting disability, as set forth in items i, ii, iii, or iv
27 of subparagraph a of this paragraph, results in a permanent total
28 disability as defined under this chapter; or

1 (b) An employee is employed in a sheltered workshop as
2 established in sections 205.968 to 205.972 or sections 178.900 to
3 178.960 and such employee thereafter sustains a compensable work-
4 related injury that, when combined with the preexisting
5 disability, results in a permanent total disability as defined
6 under this chapter.

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

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

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

20 (1) The state treasurer, with the advice and consent of the
21 attorney general of Missouri, may enter into compromise
22 settlements as contemplated by section 287.390, or agreed
23 statements of fact that would affect the second injury fund. All
24 awards for permanent partial disability, permanent total
25 disability, or death affecting the second injury fund shall be
26 subject to the provisions of this chapter governing review and
27 appeal.

28 (2) For all claims filed against the second injury fund on

1 or after July 1, 1994, the attorney general shall use assistant
2 attorneys general except in circumstances where an actual or
3 potential conflict of interest exists, to provide legal services
4 as may be required in all claims made for recovery against the
5 fund. Any legal expenses incurred by the attorney general's
6 office in the handling of such claims, including, but not limited
7 to, medical examination fees incurred under sections 287.210 and
8 the expenses provided for under section 287.140, expert witness
9 fees, court reporter expenses, travel costs, and related legal
10 expenses shall be paid by the fund. Effective July 1, 1993, the
11 payment of such legal expenses shall be contingent upon annual
12 appropriations made by the general assembly, from the fund, to
13 the attorney general's office for this specific purpose.

14 [3.] 5. If more than one injury in the same employment
15 causes concurrent temporary disabilities, compensation shall be
16 payable only for the longest and largest paying disability.

17 [4.] 6. If more than one injury in the same employment
18 causes concurrent and consecutive permanent partial disability,
19 compensation payments for each subsequent disability shall not
20 begin until the end of the compensation period of the prior
21 disability.

22 [5.] 7. If an employer fails to insure or self-insure as
23 required in section 287.280, funds from the second injury fund
24 may be withdrawn to cover the fair, reasonable, and necessary
25 expenses incurred relating to claims for injuries occurring prior
26 to the effective date of this section, to cure and relieve the
27 effects of the injury or disability of an injured employee in the
28 employ of an uninsured employer consistent with subsection 3 of

1 section 287.140, or in the case of death of an employee in the
2 employ of an uninsured employer, funds from the second injury
3 fund may be withdrawn to cover fair, reasonable, and necessary
4 expenses incurred relating to a death occurring prior to the
5 effective date of this section, in the manner required in
6 sections 287.240 and 287.241. In defense of claims arising under
7 this subsection, the treasurer of the state of Missouri, as
8 custodian of the second injury fund, shall have the same defenses
9 to such claims as would the uninsured employer. Any funds
10 received by the employee or the employee's dependents, through
11 civil or other action, must go towards reimbursement of the
12 second injury fund, for all payments made to the employee, the
13 employee's dependents, or paid on the employee's behalf, from the
14 second injury fund pursuant to this subsection. The office of
15 the attorney general of the state of Missouri shall bring suit in
16 the circuit court of the county in which the accident occurred
17 against any employer not covered by this chapter as required in
18 section 287.280.

19 [6.] 8. Every [three years] year the second injury fund
20 shall have an actuarial study made to determine the solvency of
21 the fund taking into consideration any existing balance carried
22 forward from a previous year, appropriate funding level of the
23 fund, and forecasted expenditures from the fund. The first
24 actuarial study shall be completed prior to July 1, [1988] 2014.
25 The expenses of such actuarial studies shall be paid out of the
26 fund for the support of the division of workers' compensation.

27 [7.] 9. The director of the division of workers'
28 compensation shall maintain the financial data and records

1 concerning the fund for the support of the division of workers'
2 compensation and the second injury fund. The division shall also
3 compile and report data on claims made pursuant to subsection [9]
4 11 of this section. The attorney general shall provide all
5 necessary information to the division for this purpose.

6 [8.] 10. All claims for fees and expenses filed against the
7 second injury fund and all records pertaining thereto shall be
8 open to the public.

9 [9.] 11. Any employee who at the time a compensable
10 work-related injury is sustained prior to the effective date of
11 this section is employed by more than one employer, the employer
12 for whom the employee was working when the injury was sustained
13 shall be responsible for wage loss benefits applicable only to
14 the earnings in that employer's employment and the injured
15 employee shall be entitled to file a claim against the second
16 injury fund for any additional wage loss benefits attributed to
17 loss of earnings from the employment or employments where the
18 injury did not occur, up to the maximum weekly benefit less those
19 benefits paid by the employer in whose employment the employee
20 sustained the injury. The employee shall be entitled to a total
21 benefit based on the total average weekly wage of such employee
22 computed according to subsection 8 of section 287.250. The
23 employee shall not be entitled to a greater rate of compensation
24 than allowed by law on the date of the injury. The employer for
25 whom the employee was working where the injury was sustained
26 shall be responsible for all medical costs incurred in regard to
27 that injury.

28 12. No compensation shall be payable from the second injury

1 fund if the employee files a claim for compensation under the
2 workers' compensation law of another state with jurisdiction over
3 the employee's injury or accident or occupational disease.

4 13. Notwithstanding the requirements of section 287.470,
5 the life payments to an injured employee made from the fund shall
6 be suspended when the employee is able to obtain suitable gainful
7 employment or be self-employed in view of the nature and severity
8 of the injury. The division shall promulgate rules setting forth
9 a reasonable standard means test to determine if such employment
10 warrants the suspension of benefits.

11 14. All awards issued under this chapter affecting the
12 second injury fund shall be subject to the provisions of this
13 chapter governing review and appeal.

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

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

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

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

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

24 (5) Interest on unpaid awards.

25
26 Such liabilities shall be paid to the extent the fund has a
27 positive balance. Any unpaid amounts shall remain an ongoing
28 liability of the fund until satisfied.

1 16. Post award interest for the purpose of second injury
2 fund claims shall be set at the adjusted rate of interest
3 established by the director of revenue pursuant to section 32.065
4 or five percent, whichever is greater.

5 287.223. 1. There is hereby created the "Missouri
6 Mesothelioma Risk Management Fund", which shall be a body
7 corporate and politic. The board of trustees of this fund shall
8 have the powers and duties specified in this section and such
9 other powers as may be necessary or proper to enable it, its
10 officers, employees and agents to carry out fully and effectively
11 all the purposes of this section.

12 2. Unless otherwise clearly indicated by the context, the
13 following words and terms as used in this section mean:

14 (1) "Board", the board of trustees of the Missouri
15 mesothelioma risk management fund;

16 (2) "Fund", the Missouri mesothelioma risk management fund
17 established by subsection 1 of this section.

18 3. Any employer may participate in the Missouri
19 mesothelioma risk management fund and use funds collected under
20 this section to pay mesothelioma awards made against an employer
21 member of the fund.

22 4. Employers who participate in the fund shall make annual
23 contributions to the fund in the amount determined by the board
24 in accordance with this section relating to rates established by
25 insurers. Participation in the fund has the same effect as
26 purchase of insurance by such employer, as otherwise provided by
27 law, and shall have the same effect as a self-insurance plan.

28 Moneys in the fund shall be available for:

1 (1) The payment and settlement of all claims for which
2 coverage has been obtained by any employer participating in the
3 fund in accordance with coverages offered by the board relating
4 to mesothelioma awards pursuant to paragraph (a) of subdivision
5 (3) of subsection 4 of section 287.200;

6 (2) Attorney's fees and expenses incurred in the
7 administration and representation of the fund.

8 5. No amount in excess of the amount specified by paragraph
9 (a) of subdivision (3) of subsection 4 of section 287.200 shall
10 be paid from the fund for the payment of claims arising out of
11 any award.

12 6. The board of trustees of the fund shall issue payment of
13 benefits in accordance with coverages offered by the board. For
14 any year in which any employer does not make a yearly
15 contribution to the fund, the board of trustees of the fund shall
16 not be responsible, in any way, for payment of any claim arising
17 from an occurrence in that year. Any employer which discontinues
18 its participation in the fund may not resume participation in the
19 fund for five calendar years after discontinuing participation.
20 Should an employer fail to make a yearly contribution, such
21 employer shall be liable pursuant to paragraph (b) of subdivision
22 (3) of subsection 4 of section 287.200 if a claim is made in such
23 year. If ongoing benefits are due by the fund for an employer
24 who fail to make a yearly contribution, such employer shall be
25 liable to the fund for the ongoing benefits.

26 7. All staff for the fund shall be provided by the
27 department of labor except as otherwise specifically determined
28 by the board. The fund shall reimburse the department of labor

1 for all costs of providing staff required by this subsection.
2 Such reimbursement shall be made on an annual basis, pursuant to
3 contract negotiated between the fund and the department of labor.
4 The fund is a body corporate and politic, and the state of
5 Missouri shall not be liable in any way with respect to claims
6 made against the fund or against member employers covered by the
7 fund, nor with respect to any expense of operation of the fund.
8 Money in the fund is not state money nor is it money collected or
9 received by the state.

10 8. Each participating employer shall notify the board of
11 trustees of the fund within seven working days of the time notice
12 is received that a claim for benefits has been made against the
13 employer. The employer shall supply information to the board of
14 trustees of the fund concerning any claim upon request. It shall
15 also notify the board of trustees of the fund upon the closing of
16 any claim.

17 9. The board may contract with independent insurance
18 agents, authorizing such agents to accept contributions to the
19 fund from employers on behalf of the board upon such terms and
20 conditions as the board deems necessary, and may provide a
21 reasonable method of compensating such agents. Such compensation
22 shall not be additional to the contribution to the fund.

23 10. There is hereby established a "Board of Trustees of the
24 Missouri Mesothelioma Risk Management Fund" which shall consist
25 of the director of the department of labor, and four members,
26 appointed by the governor with the advice and consent of the
27 senate, who are officers or employees of those employers
28 participating in the fund. No more than two members appointed by

1 the governor shall be of the same political party. The members
2 appointed by the governor shall serve four-year terms, except
3 that the original appointees shall be appointed for the following
4 terms: one for one year, one for two years, one for three years,
5 and one for four years. Any vacancies occurring on the board
6 shall be filled in the same manner. In appointing the initial
7 board of trustees the governor may anticipate which public
8 entities will participate in the fund, and the appointees may
9 serve the terms designated herein, unless they sooner resign or
10 are removed in accordance with law.

11 11. No trustee shall be liable personally in any way with
12 respect to claims made against the fund or against member
13 employers covered by the fund.

14 12. The board shall elect one of their members as chairman.
15 He or she shall preside over meetings of the board and perform
16 such other duties as shall be required by action of the board.

17 13. The chairman shall appoint another board member as vice
18 chairman, and the vice chairman shall perform the duties of the
19 chairman in the absence of the latter or upon his inability or
20 refusal to act.

21 14. The board shall appoint a secretary who shall have
22 charge of the offices and records of the fund, subject to the
23 direction of the board.

24 15. The board shall meet in Jefferson City, Missouri, upon
25 the written call of the chairman or by the agreement of any three
26 members of the board. Notice of the meeting shall be delivered
27 to all other trustees in person or by depositing notice in a
28 United States post office in a properly stamped and addressed

1 envelope not less than six days prior to the date fixed for the
2 meeting. The board may meet at any time by unanimous mutual
3 consent.

4 16. Three trustees shall constitute a quorum for the
5 transaction of business, and any official action of the board
6 shall be based on a majority vote of the trustees present.

7 17. The trustees shall serve without compensation but shall
8 receive from the fund their actual and necessary expenses
9 incurred in the performance of their duties for the board.

10 18. Duties performed for the fund by any member of the
11 board who is an employee of a member employer shall be considered
12 duties in connection with the regular employment of such
13 employer, and such person shall suffer no loss in regular
14 compensation by reason of the performance of such duties.

15 19. The board shall keep a complete record of all its
16 proceedings.

17 20. A statement covering the operations of the fund for the
18 year, including income and disbursements, and of the financial
19 condition of the fund at the end of the year, showing the
20 valuation and appraisal of its assets and liabilities, as of July
21 first, shall each year be delivered to the governor and be made
22 readily available to public entities.

23 20. The general administration of, and responsibility for,
24 the proper operation of the fund, including all decisions
25 relating to payments from the fund, are hereby vested in the
26 board of trustees.

27 21. The board shall determine and prescribe all rules,
28 regulations, coverages to be offered, forms and rates to carry

1 out the purposes of this section.

2 22. The board shall have exclusive jurisdiction and control
3 over the funds and property of the fund.

4 23. No trustee or staff member of the fund shall receive
5 any gain or profit from any moneys or transactions of the fund.

6 24. Any trustee or staff member accepting any gratuity or
7 compensation for the purpose of influencing his or her action
8 with respect to the investment of the funds of the system or in
9 the operations of the fund shall forfeit his or her office.

10 25. The board shall have the authority to use moneys from
11 the fund to purchase one or more policies of insurance or
12 reinsurance to cover the liabilities of participating employers
13 members which are covered by the fund. If such insurance can be
14 procured, the board shall have the authority to procure insurance
15 covering participating member employers per occurrence for
16 liabilities covered by the fund. The costs of such insurance
17 shall be considered in determining the contribution of each
18 employer member.

19 26. The board shall have the authority to use moneys from
20 the fund to assist participating members in assessing and
21 reducing the risk of liabilities which may be covered by the
22 fund.

23 27. The board shall set up and maintain a Missouri
24 mesothelioma risk management fund account in which shall be
25 placed all contributions, premiums, and income from all sources.
26 All property, money, funds, investments, and rights which shall
27 belong to, or be available for expenditure or use by, the fund
28 shall be dedicated to and held in trust for the purposes set out

1 in this section and no other. The board shall have power, in the
2 name of and on behalf of the fund, to purchase, acquire, hold,
3 invest, lend, lease, sell, assign, transfer, and dispose of all
4 property, rights, and securities, and enter into written
5 contracts, all as may be necessary or proper to carry out the
6 purposes of this section.

7 28. All moneys received by or belonging to the fund shall
8 be paid to the secretary and deposited by him or her to the
9 credit of the fund in one or more banks or trust companies. No
10 such money shall be deposited in or be retained by any bank and
11 trust company which does not have on deposit with the board at
12 the time the kind and value of collateral required by section
13 30.270 for depositories of the state treasurer. The secretary
14 shall be responsible for all funds, securities, and property
15 belonging to the fund, and shall give such corporate surety bond
16 for the faithful handling of the same as the board shall require.

17 29. So far as practicable, the funds and property of the
18 fund shall be kept safely invested so as to earn a reasonable
19 return. The board may invest the funds of the fund as permitted
20 by the laws of Missouri relating to the investment of the
21 capital, reserve, and surplus funds of casualty insurance
22 companies organized under the laws of Missouri.

23 30. If contributions to the fund do not produce sufficient
24 funds to pay any claims which may be due, the board shall assess
25 and each member, including any member who has withdrawn but was a
26 member in the year in which the assessment is required, shall pay
27 such additional amounts which are each member's proportionate
28 share of total claims allowed and due. The provisions of this

1 subsection shall apply retroactively to the creation of the
2 Missouri mesothelioma risk management fund.

3 31. The board, in order to carry out the purposes for which
4 the fund is established, may select and employ, or contract with,
5 persons experienced in insurance underwriting, accounting, the
6 servicing of claims, and rate making, who shall serve at the
7 board's pleasure, as technical advisors in establishing the
8 annual contribution, or may call upon the director of the
9 department of insurance, financial institutions and professional
10 registration for such services.

11 32. Nothing in this section, shall be construed to broaden
12 or restrict the liability of the member employers participating
13 in the fund beyond the provisions of this sections, nor to
14 abolish or waive any defense at law which might otherwise be
15 available to any employer member.

16 33. If, at the end of any fiscal year, the fund has a
17 balance exceeding projected needs, and adequate reserves, the
18 board may in its discretion refund on a pro rata basis to all
19 participating employer members an amount based on the
20 contributions of the public entity for the immediately preceding
21 year.

22 287.280. 1. Every employer subject to the provisions of
23 this chapter shall, on either an individual or group basis,
24 insure [his] their entire liability [thereunder] under the
25 workers' compensation law; and may insure in whole or in part
26 their employer liability, under a policy of insurance or a self-
27 insurance plan, except as hereafter provided, with some insurance
28 carrier authorized to insure such liability in this state, except

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

1 compensation, and if not given, all other compensation shall be
2 commuted and become immediately payable; provided, that employers
3 engaged in the mining business shall be required to insure only
4 their liability hereunder to the extent of the equivalent of the
5 maximum liability under this chapter for ten deaths in any one
6 accident, but the employer or group of employers may carry their
7 own risk for any excess liability. When a group of employers
8 enter into an agreement to pool their liabilities under this
9 chapter, individual members will not be required to qualify as
10 individual self-insurers.

11 2. Groups of employers qualified to insure their liability
12 pursuant to chapter 537 or this chapter, shall utilize a uniform
13 experience rating plan promulgated by an approved advisory
14 organization. Such groups shall develop experience ratings for
15 their members based on the plan. Nothing in this section shall
16 relieve an employer from remitting, without any charge to the
17 employer, the employer's claims history to an approved advisory
18 organization.

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

25 4. Any group of employers that have qualified to
26 self-insure their liability pursuant to this chapter shall file
27 with the division premium rates, based on pure premium rate data,
28 adjusted for loss development and loss trending as filed by the

1 advisory organization with the department of insurance, financial
2 institutions and professional registration pursuant to section
3 287.975, plus any estimated expenses and other factors or based
4 on average rate classifications calculated by the department of
5 insurance, financial institutions and professional registration
6 as taken from the premium rates filed by the twenty insurance
7 companies providing the greatest volume of workers' compensation
8 insurance coverage in this state. The rate is inadequate if
9 funds equal to the full ultimate cost of anticipated losses and
10 loss adjustment expenses are not produced when the prospective
11 loss costs are applied to anticipated payrolls. The provisions
12 of this subsection shall not apply to those political
13 subdivisions of this state that have qualified to self-insure
14 their liability pursuant to this chapter as authorized by section
15 537.620 on an assessment plan. Any such group may file with the
16 division a composite rate for all coverages provided under that
17 section.

18 5. Any finding or determination made by the division under
19 this section may be reviewed as provided in sections 287.470 and
20 287.480.

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

24 7. Any records submitted pursuant to this section, and
25 pursuant to any rule promulgated by the division pursuant to this
26 section, shall be considered confidential and not subject to
27 chapter 610. Any party to a workers' compensation case involving
28 the party that submitted the records shall be able to subpoena
29 the records for use in a workers' compensation case, if the

1 information is otherwise relevant.

2 287.610. 1. After August 28, 2005, the division may
3 appoint additional administrative law judges for a maximum of
4 forty authorized administrative law judges. Appropriations shall
5 be based upon necessity, measured by the requirements and needs
6 of each division office. Administrative law judges shall be duly
7 licensed lawyers under the laws of this state. Administrative
8 law judges shall not practice law or do law business and shall
9 devote their whole time to the duties of their office. The
10 director of the division of workers' compensation shall publish
11 and maintain on the division's website the appointment dates or
12 initial dates of service for all administrative law judges.

13 2. [The division director, as a member of the
14 administrative law judge review committee, hereafter referred to
15 as "the committee", shall perform, in conjunction with the
16 committee, a performance audit of all administrative law judges
17 by August 28, 2006. The division director, in conjunction with
18 the committee, shall establish the written performance audit
19 standards on or before October 1, 2005.

20 3.] The thirteen administrative law judges with the most
21 years of service shall be subject to a retention vote on August
22 28, 2008. The next thirteen administrative law judges with the
23 most years of service in descending order shall be subject to a
24 retention vote on August 28, 2012. Administrative law judges
25 appointed and not previously referenced in this subsection shall
26 be subject to a retention vote on August 28, 2016. Subsequent
27 retention votes shall be held every twelve years. Any
28 administrative law judge who has received two or more votes of no
29 confidence under performance audits by the committee shall not

1 receive a vote of retention.

2 [4.] 3. The administrative law judge review committee
3 members shall not have any direct or indirect employment or
4 financial connection with a workers' compensation insurance
5 company, claims adjustment company, health care provider nor be a
6 practicing workers' compensation attorney. All members of the
7 committee shall have a working knowledge of workers'
8 compensation.

9 [5.] 4. The committee shall within thirty days of
10 completing each performance audit make a recommendation of
11 confidence or no confidence for each administrative law judge.

12 [6.] 5. The administrative law judges appointed by the
13 division shall only have jurisdiction to hear and determine
14 claims upon original hearing and shall have no jurisdiction upon
15 any review hearing, either in the way of an appeal from an
16 original hearing or by way of reopening any prior award, except
17 to correct a clerical error in an award or settlement if the
18 correction is made by the administrative law judge within twenty
19 days of the original award or settlement. The labor and
20 industrial relations commission may remand any decision of an
21 administrative law judge for a more complete finding of facts.
22 The commission may also correct a clerical error in awards or
23 settlements within thirty days of its final award. With respect
24 to original hearings, the administrative law judges shall have
25 such jurisdiction and powers as are vested in the division of
26 workers' compensation under other sections of this chapter, and
27 wherever in this chapter the word "commission", "commissioners"
28 or "division" is used in respect to any original hearing, those
29 terms shall mean the administrative law judges appointed under

1 this section. When a hearing is necessary upon any claim, the
2 division shall assign an administrative law judge to such
3 hearing. Any administrative law judge shall have power to
4 approve contracts of settlement, as provided by section 287.390,
5 between the parties to any compensation claim or dispute under
6 this chapter pending before the division of workers'
7 compensation. Any award by an administrative law judge upon an
8 original hearing shall have the same force and effect, shall be
9 enforceable in the same manner as provided elsewhere in this
10 chapter for awards by the labor and industrial relations
11 commission, and shall be subject to review as provided by section
12 287.480.

13 [7.] 6. Any of the administrative law judges employed
14 pursuant to this section may be assigned on a temporary basis to
15 the branch offices as necessary in order to ensure the proper
16 administration of this chapter.

17 [8.] 7. All administrative law judges shall be required to
18 participate in, on a continuing basis, specific training that
19 shall pertain to those elements of knowledge and procedure
20 necessary for the efficient and competent performance of the
21 administrative law judges' required duties and responsibilities.
22 Such training requirements shall be established by the division
23 subject to appropriations and shall include training in medical
24 determinations and records, mediation and legal issues pertaining
25 to workers' compensation adjudication. Such training may be
26 credited toward any continuing legal education requirements.

27 [9.] 8. (1) [The director of the division, in conjunction
28 with] The administrative law judge review committee[,] shall
29 conduct a performance audit of all administrative law judges

1 every two years. The audit results, stating the committee's
2 recommendation of confidence or no confidence of each
3 administrative law judge shall be sent to the governor no later
4 than the first week of each legislative session immediately
5 following such audit. Any administrative law judge who has
6 received [~~two~~] three or more votes of no confidence under two
7 successive performance audits by the committee may have their
8 appointment immediately withdrawn.

9 (2) The review committee shall consist of [~~the division~~
10 ~~director, who shall be appointed by the governor,~~] one member
11 appointed by the president pro tem of the senate, one member
12 appointed by the minority leader of the senate, one member
13 appointed by the speaker of the house of representatives, and one
14 member appointed by the minority leader of the house of
15 representatives. The governor shall appoint to the committee one
16 member selected from the commission on retirement, removal, and
17 discipline of judges. This member shall act as a member
18 ex-officio and shall not have a vote in the committee. [~~The~~
19 ~~division director shall serve as the chairperson of the~~
20 ~~committee, and shall serve on the committee during the time of~~
21 ~~employment in such position.] The committee shall annually elect
22 a chairperson from its members for a term of one year. The term
23 of service for all [~~other~~] members shall be two years. The
24 review committee members shall all serve without compensation.
25 Necessary expenses for review committee members and all necessary
26 support services to the review committee shall be provided by the
27 division.~~

28 [~~10.~~] 9. No rule or portion of a rule promulgated pursuant

1 to the authority of this section shall become effective unless it
2 has been promulgated pursuant to the provisions of chapter 536.

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

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

1 deposits, net premiums, or net assessments for the previous
2 policy year, rounded up to the nearest one-half of a percentage
3 point, that shall generate, as nearly as possible, one hundred
4 ten percent of the moneys to be paid from the second injury fund
5 in the following calendar year, less any moneys contained in the
6 fund at the end of the previous calendar year. All policyholders
7 and self-insurers shall be notified by the division of workers'
8 compensation within ten calendar days of the determination of the
9 surcharge percent to be imposed for, and paid in, the following
10 calendar year. The net premium equivalent for individual
11 self-insured employers and any group of political subdivisions of
12 this state qualified to self-insure their liability pursuant to
13 this chapter as authorized by section 537.620 shall be based on
14 average rate classifications calculated by the department of
15 insurance, financial institutions and professional registration
16 as taken from premium rates filed by the twenty insurance
17 companies providing the greatest volume of workers' compensation
18 insurance coverage in this state. For employers qualified to
19 self-insure their liability pursuant to this chapter, the rates
20 filed by such group of employers in accordance with subsection 2
21 of section 287.280 shall be the net premium equivalent. The
22 director may advance funds from the workers' compensation fund to
23 the second injury fund if surcharge collections prove to be
24 insufficient. Any funds advanced from the workers' compensation
25 fund to the second injury fund must be reimbursed by the second
26 injury fund no later than December thirty-first of the year
27 following the advance. The surcharge shall be collected from
28 policyholders by each insurer at the same time and in the same
29 manner that the premium is collected, but no insurer or its agent

1 shall be entitled to any portion of the surcharge as a fee or
2 commission for its collection. The surcharge is not subject to
3 any taxes, licenses or fees.

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

6 4. Such surcharge amounts shall be paid quarterly by
7 insurers and self-insurers, and insurers shall pay the amounts
8 not later than the thirtieth day of the month following the end
9 of the quarter in which the amount is received from
10 policyholders. If the director of the division of workers'
11 compensation fails to calculate the surcharge by the thirty-first
12 day of October of any year for the following year, any increase
13 in the surcharge ultimately set by the director shall not be
14 effective for any calendar quarter beginning less than sixty days
15 from the date the director makes such determination.

16 5. If a policyholder or self-insured fails to make payment
17 of the surcharge or an insurer fails to make timely transfer to
18 the division of surcharges actually collected from policyholders,
19 as required by this section, a penalty of one-half of one percent
20 of the surcharge unpaid, or untransferred, shall be assessed
21 against the liable policyholder, self-insured or insurer.
22 Penalties assessed under this subsection shall be collected in a
23 civil action by a summary proceeding brought by the director of
24 the division of workers' compensation.

25 6. Notwithstanding subsection 2 of this section to the
26 contrary, the director of the division of workers' compensation
27 shall collect a supplemental surcharge not to exceed three
28 percent for calendar years 2014 to 2021 of the policyholder's or
29 self-insured's workers' compensation net deposits, net premiums,

1 or net assessments for the previous policy year, rounded up to
2 the nearest one-half of a percentage point. All policyholders
3 and self-insurers shall be notified by the division of the
4 supplemental surcharge percentage to be imposed for such period
5 of time as part of the notice provided in subsection 2 of this
6 section. The provisions of this subsection shall expire on
7 December 31, 2021.

8 7. Funds collected under the provisions of this chapter
9 shall be the sole funding source of the second injury fund.

10 287.745. 1. If the tax imposed by sections 287.690,
11 287.710, and 287.715 are not paid when due, the taxpayer shall be
12 required to pay, as part of such tax, interest thereon at the
13 rate of one and one-half percent per month for each month or
14 fraction thereof delinquent. In the event the state prevails in
15 any dispute concerning an assessment of tax which has not been
16 paid by the taxpayer, interest shall be paid upon the amount
17 found due to the state at the rate of one and one-half percent
18 per month for each month or fraction thereof delinquent.

19 2. In any legal contest concerning the amount of tax under
20 sections 287.690, 287.710 and 287.715 for a calendar year, the
21 quarterly installments for the following year shall continue to
22 be made based upon the amount assessed by the director of revenue
23 for the year in question. If after the end of any taxable year,
24 the amount of the actual tax due is less than the total amount of
25 the installments actually paid, the amount by which the amount
26 paid exceeds the amount due shall at the election of the taxpayer
27 be refunded or credited against the tax for the following year
28 and in the event of a credit, deducted from the quarterly
29 installment otherwise due on June first.

1 287.955. 1. Every workers' compensation insurer shall
2 adhere to a uniform classification system and uniform experience
3 rating plan filed with the director by the advisory organization
4 designated by the director and subject to his disapproval.

5 2. An insurer may develop subclassifications of the uniform
6 classification system upon which a rate may be made, except that
7 such subclassifications shall be filed with the director thirty
8 days prior to their use. The director shall disapprove
9 subclassifications if the insurer fails to demonstrate that the
10 data thereby produced can be reported consistent with the uniform
11 statistical plan and classification system.

12 [2.] 3. The director shall designate an advisory
13 organization to assist him in gathering, compiling and reporting
14 relevant statistical information. Every workers' compensation
15 insurer shall record and report its workers' compensation
16 experience to the designated advisory organization as set forth
17 in the uniform statistical plan approved by the director.

18 [3.] 4. The designated advisory organization shall develop
19 and file manual rules, subject to the approval of the director,
20 reasonably related to the recording and reporting of data
21 pursuant to the uniform statistical plan, uniform experience
22 rating plan, and the uniform classification system.

23 5. Every workers' compensation insurer shall adhere to the
24 approved manual rules and experience rating plan in writing and
25 reporting its business. No insurer shall agree with any other
26 insurer or with the advisory organization to adhere to manual
27 rules which are not reasonably related to the recording and
28 reporting of data pursuant to the uniform classification system
29 of the uniform statistical plan.

1 6. A workers' compensation insurer may develop an
2 individual risk premium modification rating plan which
3 prospectively modifies premium based upon individual risk
4 characteristics which are predictive of future loss. Such rating
5 plan shall be filed thirty days prior to use and may be subject
6 to disapproval by the director.

7 (1) The rating plan shall establish objective standards for
8 measuring variations in individual risks for hazards or expense
9 or both. The rating plan shall be actuarially justified and
10 shall not result in premiums which are excessive, inadequate, or
11 unfairly discriminatory. The rating plan shall not utilize
12 factors which are duplicative of factors otherwise utilized in
13 the development of rates or premiums, including the uniform
14 classification system and the uniform experience rating plan.
15 The premium modification factors utilized under the rating plan
16 shall be applied on a statewide basis, with no premium
17 modifications based solely upon the geographic location of the
18 employer.

19 (2) Within thirty days of a request, the insurer shall
20 clearly disclose to the employer the individual risk
21 characteristics which result in premium modifications. However,
22 this disclosure shall not in any way require the release to the
23 insured employer of any trade secret or proprietary information
24 or data used to derive the premium modification and that meets
25 the definitions of, and is protected by, the provisions of
26 chapter 417.

27 (3) Premium modifications under this subsection may be
28 determined by an underwriter assessing the individual risk
29 characteristics and applying premium credits and debits as

1 specified under a schedule rating plan. Alternatively, an
2 insurer may utilize software or a computer risk modeling system
3 designed to identify and assess individual risk characteristics
4 and which systematically and uniformly applies premium
5 modifications to similarly-situated employers.

6 (a) Premium modifications resulting from a schedule rating
7 plan, with an underwriter determining individual risk
8 characteristics, shall be limited to plus or minus twenty-five
9 percent. An additional ten percent credit may be given for a
10 reduction in the insurer's expenses.

11 (b) Premium modifications resulting from a risk modeling
12 system shall be limited to plus or minus fifty percent. Premium
13 modifications resulting from a risk modeling system shall be
14 reported separately under the uniform statistical plan from
15 premium modifications resulting from a schedule rating plan.

16 (c) Premium credits or reductions shall not be removed or
17 reduced unless there is a change in the insurer, the insurer
18 amends or withdraws the rating plan, or unless there is a
19 corresponding change in the insured employer's operations or risk
20 characteristics underlying the credit or reduction.

21 Section B. Section A of this act shall become effective
22 January 1, 2014.

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29 _____
Scott Rupp

Todd Richardson