

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1

AN ACT

To repeal sections 287.067, 287.120, 287.140, 287.210, 287.220, 287.690, 287.715, and 287.745, RSMo, and to enact in lieu thereof nine new sections relating to workers' compensation, with an existing penalty provision and an emergency clause for certain sections.

---

---

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

1           Section A. Sections 287.067, 287.120, 287.140, 287.210,  
2 287.220, 287.690, 287.715, and 287.745, RSMo, are repealed and  
3 nine new sections enacted in lieu thereof, to be known as  
4 sections 287.067, 287.120, 287.140, 287.165, 287.210, 287.220,  
5 287.690, 287.715, and 287.745, to read as follows:

6           287.067. 1. In this chapter the term "occupational  
7 disease" is hereby defined to mean, unless a different meaning is  
8 clearly indicated by the context, an identifiable disease arising  
9 with or without human fault out of and in the course of the  
10 employment. Ordinary diseases of life to which the general  
11 public is exposed outside of the employment shall not be  
12 compensable, except where the diseases follow as an incident of  
13 an occupational disease as defined in this section. The disease  
14 need not to have been foreseen or expected but after its  
15 contraction it must appear to have had its origin in a risk  
16 connected with the employment and to have flowed from that source

1 as a rational consequence.

2 2. An injury or death by occupational disease is  
3 compensable only if the occupational exposure was the prevailing  
4 factor in causing both the resulting medical condition and  
5 disability. The "prevailing factor" is defined to be the primary  
6 factor, in relation to any other factor, causing both the  
7 resulting medical condition and disability. Ordinary, gradual  
8 deterioration, or progressive degeneration of the body caused by  
9 aging or by the normal activities of day-to-day living shall not  
10 be compensable.

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

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

26 5. "Radiation disability" is recognized as an occupational  
27 disease for purposes of this chapter and is hereby defined to be  
28 that disability due to radioactive properties or substances or to

1 Roentgen rays (X-rays) or exposure to ionizing radiation caused  
2 by any process involving the use of or direct contact with radium  
3 or radioactive properties or substances or the use of or direct  
4 exposure to Roentgen rays (X-rays) or ionizing radiation.

5 6. Disease of the lungs or respiratory tract, hypotension,  
6 hypertension, or disease of the heart or cardiovascular system,  
7 including carcinoma, may be recognized as occupational diseases  
8 for the purposes of this chapter and are defined to be disability  
9 due to exposure to smoke, gases, carcinogens, inadequate oxygen,  
10 of paid firefighters of a paid fire department or paid police  
11 officers of a paid police department certified under chapter 590  
12 if a direct causal relationship is established, or psychological  
13 stress of firefighters of a paid fire department if a direct  
14 causal relationship is established.

15 7. Any employee who is exposed to and contracts any  
16 contagious or communicable disease arising out of and in the  
17 course of his or her employment shall be eligible for benefits  
18 under this chapter as an occupational disease.

19 8. With regard to occupational disease due to repetitive  
20 motion, if the exposure to the repetitive motion which is found  
21 to be the cause of the injury is for a period of less than three  
22 months and the evidence demonstrates that the exposure to the  
23 repetitive motion with the immediate prior employer was the  
24 prevailing factor in causing the injury, the prior employer shall  
25 be liable for such occupational disease.

26 287.120. 1. Every employer subject to the provisions of  
27 this chapter shall be liable, irrespective of negligence, to  
28 furnish compensation under the provisions of this chapter for

1 personal injury or death of the employee by accident or  
2 occupational disease arising out of and in the course of the  
3 employee's employment. Any employee of such employer shall not  
4 be liable for any injury or death for which compensation is  
5 recoverable under this chapter and every employer and employees  
6 of such employer shall be released from all other liability  
7 whatsoever, whether to the employee or any other person, except  
8 that an employee shall not be released from liability for injury  
9 or death if the employee engaged in an affirmative negligent act  
10 that purposefully and dangerously caused or increased the risk of  
11 injury. The term "accident" as used in this section shall  
12 include, but not be limited to, injury or death of the employee  
13 caused by the unprovoked violence or assault against the employee  
14 by any person.

15 2. The rights and remedies herein granted to an employee  
16 shall exclude all other rights and remedies of the employee, his  
17 wife, her husband, parents, personal representatives, dependents,  
18 heirs or next kin, at common law or otherwise, on account of such  
19 injury or death by accident or occupational disease, except such  
20 rights and remedies as are not provided for by this chapter.

21 3. No compensation shall be allowed under this chapter for  
22 the injury or death due to the employee's intentional  
23 self-inflicted injury, but the burden of proof of intentional  
24 self-inflicted injury shall be on the employer or the person  
25 contesting the claim for allowance.

26 4. Where the injury is caused by the failure of the  
27 employer to comply with any statute in this state or any lawful  
28 order of the division or the commission, the compensation and

1 death benefit provided for under this chapter shall be increased  
2 fifteen percent.

3 5. Where the injury is caused by the failure of the  
4 employee to use safety devices where provided by the employer, or  
5 from the employee's failure to obey any reasonable rule adopted  
6 by the employer for the safety of employees, the compensation and  
7 death benefit provided for herein shall be reduced at least  
8 twenty-five but not more than fifty percent; provided, that it is  
9 shown that the employee had actual knowledge of the rule so  
10 adopted by the employer; and provided, further, that the employer  
11 had, prior to the injury, made a reasonable effort to cause his  
12 or her employees to use the safety device or devices and to obey  
13 or follow the rule so adopted for the safety of the employees.

14 6. (1) Where the employee fails to obey any rule or policy  
15 adopted by the employer relating to a drug-free workplace or the  
16 use of alcohol or nonprescribed controlled drugs in the  
17 workplace, the compensation and death benefit provided for herein  
18 shall be reduced fifty percent if the injury was sustained in  
19 conjunction with the use of alcohol or nonprescribed controlled  
20 drugs.

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

26 (3) The voluntary use of alcohol to the percentage of blood  
27 alcohol sufficient under Missouri law to constitute legal  
28 intoxication shall give rise to a rebuttable presumption that the

1 voluntary use of alcohol under such circumstances was the  
2 proximate cause of the injury. A preponderance of the evidence  
3 standard shall apply to rebut such presumption. An employee's  
4 refusal to take a test for alcohol or a nonprescribed controlled  
5 substance, as defined by section 195.010, at the request of the  
6 employer shall result in the forfeiture of benefits under this  
7 chapter if the employer had sufficient cause to suspect use of  
8 alcohol or a nonprescribed controlled substance by the claimant  
9 or if the employer's policy clearly authorizes post-injury  
10 testing.

11 7. Where the employee's participation in a recreational  
12 activity or program is the prevailing cause of the injury,  
13 benefits or compensation otherwise payable under this chapter for  
14 death or disability shall be forfeited regardless that the  
15 employer may have promoted, sponsored or supported the  
16 recreational activity or program, expressly or impliedly, in  
17 whole or in part. The forfeiture of benefits or compensation  
18 shall not apply when:

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

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

23 (3) The injury from such recreational activity or program  
24 occurs on the employer's premises due to an unsafe condition and  
25 the employer had actual knowledge of the employee's participation  
26 in the recreational activity or program and of the unsafe  
27 condition of the premises and failed to either curtail the  
28 recreational activity or program or cure the unsafe condition.

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

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

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

15           287.140. 1. In addition to all other compensation paid to  
16 the employee under this section, the employee shall receive and  
17 the employer shall provide such medical, surgical, chiropractic,  
18 and hospital treatment, including nursing, custodial, ambulance  
19 and medicines, as may reasonably be required after the injury or  
20 disability, to cure and relieve from the effects of the injury.  
21 If the employee desires, he shall have the right to select his  
22 own physician, surgeon, or other such requirement at his own  
23 expense. Where the requirements are furnished by a public  
24 hospital or other institution, payment therefor shall be made to  
25 the proper authorities. Regardless of whether the health care  
26 provider is selected by the employer or is selected by the  
27 employee at the employee's expense, the health care provider  
28 shall have the affirmative duty to communicate fully with the

1 employee regarding the nature of the employee's injury and  
2 recommended treatment exclusive of any evaluation for a permanent  
3 disability rating. Failure to perform such duty to communicate  
4 shall constitute a disciplinary violation by the provider subject  
5 to the provisions of chapter 620. When an employee is required  
6 to submit to medical examinations or necessary medical treatment  
7 at a place outside of the local or metropolitan area from the  
8 employee's principal place of employment, the employer or its  
9 insurer shall advance or reimburse the employee for all necessary  
10 and reasonable expenses; except that an injured employee who  
11 resides outside the state of Missouri and who is employed by an  
12 employer located in Missouri shall have the option of selecting  
13 the location of services provided in this section either at a  
14 location within one hundred miles of the injured employee's  
15 residence, place of injury or place of hire by the employer. The  
16 choice of provider within the location selected shall continue to  
17 be made by the employer. In case of a medical examination if a  
18 dispute arises as to what expenses shall be paid by the employer,  
19 the matter shall be presented to the legal advisor, the  
20 administrative law judge or the commission, who shall set the sum  
21 to be paid and same shall be paid by the employer prior to the  
22 medical examination. In no event, however, shall the employer or  
23 its insurer be required to pay transportation costs for a greater  
24 distance than two hundred fifty miles each way from place of  
25 treatment.

26 2. If it be shown to the division or the commission that  
27 the requirements are being furnished in such manner that there is  
28 reasonable ground for believing that the life, health, or



1 recovery of the employee is endangered thereby, the division or  
2 the commission may order a change in the physician, surgeon,  
3 hospital or other requirement.

4 3. All fees and charges under this chapter shall be fair  
5 and reasonable, shall be subject to regulation by the division or  
6 the commission, or the board of rehabilitation in rehabilitation  
7 cases. A health care provider shall not charge a fee for  
8 treatment and care which is governed by the provisions of this  
9 chapter greater than the usual and customary fee the provider  
10 receives for the same treatment or service when the payor for  
11 such treatment or service is a private individual or a private  
12 health insurance carrier. The division or the commission, or the  
13 board of rehabilitation in rehabilitation cases, shall also have  
14 jurisdiction to hear and determine all disputes as to such  
15 charges. A health care provider is bound by the determination  
16 upon the reasonableness of health care bills.

17 4. The division shall, by regulation, establish methods to  
18 resolve disputes concerning the reasonableness of medical  
19 charges, services, or aids. This regulation shall govern  
20 resolution of disputes between employers and medical providers  
21 over fees charged, whether or not paid, and shall be in lieu of  
22 any other administrative procedure under this chapter. The  
23 employee shall not be a party to a dispute over medical charges,  
24 nor shall the employee's recovery in any way be jeopardized  
25 because of such dispute. Under such regulation, any application  
26 for payment of additional reimbursement, as such term is used in  
27 8 CSR 50-2.030, as amended, shall be filed not later than:

28 (1) Two years from the date the medical services were

1 rendered if such services were rendered before July 1, 2013; and  
2 (2) One year from the date the medical services were  
3 rendered if such services were rendered on or after July 1, 2013.

4 5. No compensation shall be payable for the death or  
5 disability of an employee, if and insofar as the death or  
6 disability may be caused, continued or aggravated by any  
7 unreasonable refusal to submit to any medical or surgical  
8 treatment or operation, the risk of which is, in the opinion of  
9 the division or the commission, inconsiderable in view of the  
10 seriousness of the injury. If the employee dies as a result of  
11 an operation made necessary by the injury, the death shall be  
12 deemed to be caused by the injury.

13 6. The testimony of any physician or chiropractic physician  
14 who treated the employee shall be admissible in evidence in any  
15 proceedings for compensation under this chapter, subject to all  
16 of the provisions of section 287.210.

17 7. Every hospital or other person furnishing the employee  
18 with medical aid shall permit its record to be copied by and  
19 shall furnish full information to the division or the commission,  
20 the employer, the employee or his dependents and any other party  
21 to any proceedings for compensation under this chapter, and  
22 certified copies of the records shall be admissible in evidence  
23 in any such proceedings.

24 8. The employer may be required by the division or the  
25 commission to furnish an injured employee with artificial legs,  
26 arms, hands, surgical orthopedic joints, or eyes, or braces, as  
27 needed, for life whenever the division or the commission shall  
28 find that the injured employee may be partially or wholly

1 relieved of the effects of a permanent injury by the use thereof.  
2 The director of the division shall establish a procedure whereby  
3 a claim for compensation may be reactivated after settlement of  
4 such claim is completed. The claim shall be reactivated only  
5 after the claimant can show good cause for the reactivation of  
6 this claim and the claim shall be made only for the payment of  
7 medical procedures involving life-threatening surgical procedures  
8 or if the claimant requires the use of a new, or the  
9 modification, alteration or exchange of an existing, prosthetic  
10 device. For the purpose of this subsection, "life threatening"  
11 shall mean a situation or condition which, if not treated  
12 immediately, will likely result in the death of the injured  
13 worker.

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

17 10. The employer shall have the right to select the  
18 licensed treating physician, surgeon, chiropractic physician, or  
19 other health care provider; provided, however, that such  
20 physicians, surgeons or other health care providers shall offer  
21 only those services authorized within the scope of their  
22 licenses. For the purpose of this subsection, subsection 2 of  
23 section 287.030 shall not apply.

24 11. Any physician or other health care provider who orders,  
25 directs or refers a patient for treatment, testing, therapy or  
26 rehabilitation at any institution or facility shall, at or prior  
27 to the time of the referral, disclose in writing if such health  
28 care provider, any of his partners or his employer has a

1 financial interest in the institution or facility to which the  
2 patient is being referred, to the following:

- 3 (1) The patient;
- 4 (2) The employer of the patient with workers' compensation  
5 liability for the injury or disease being treated;
- 6 (3) The workers' compensation insurer of such employer; and
- 7 (4) The workers' compensation adjusting company for such  
8 insurer.

9 12. Violation of subsection 11 of this section is a class A  
10 misdemeanor.

11 13. (1) No hospital, physician or other health care  
12 provider, other than a hospital, physician or health care  
13 provider selected by the employee at his own expense pursuant to  
14 subsection 1 of this section, shall bill or attempt to collect  
15 any fee or any portion of a fee for services rendered to an  
16 employee due to a work-related injury or report to any credit  
17 reporting agency any failure of the employee to make such  
18 payment, when an injury covered by this chapter has occurred and  
19 such hospital, physician or health care provider has received  
20 actual notice given in writing by the employee, the employer or  
21 the employer's insurer. Actual notice shall be deemed received  
22 by the hospital, physician or health care provider five days  
23 after mailing by certified mail by the employer or insurer to the  
24 hospital, physician or health care provider.

25 (2) The notice shall include:

- 26 (a) The name of the employer;
- 27 (b) The name of the insurer, if known;
- 28 (c) The name of the employee receiving the services;

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

2 (e) Where a claim has been filed, the claim number, if  
3 known.

4 (3) When an injury is found to be noncompensable under this  
5 chapter, the hospital, physician or other health care provider  
6 shall be entitled to pursue the employee for any unpaid portion  
7 of the fee or other charges for authorized services provided to  
8 the employee. Any applicable statute of limitations for an  
9 action for such fees or other charges shall be tolled from the  
10 time notice is given to the division by a hospital, physician or  
11 other health care provider pursuant to subdivision (6) of this  
12 subsection, until a determination of noncompensability in regard  
13 to the injury which is the basis of such services is made, or in  
14 the event there is an appeal to the labor and industrial  
15 relations commission, until a decision is rendered by that  
16 commission.

17 (4) If a hospital, physician or other health care provider  
18 or a debt collector on behalf of such hospital, physician or  
19 other health care provider pursues any action to collect from an  
20 employee after such notice is properly given, the employee shall  
21 have a cause of action against the hospital, physician or other  
22 health care provider for actual damages sustained plus up to one  
23 thousand dollars in additional damages, costs and reasonable  
24 attorney's fees.

25 (5) If an employer or insurer fails to make payment for  
26 authorized services provided to the employee by a hospital,  
27 physician or other health care provider pursuant to this chapter,  
28 the hospital, physician or other health care provider may proceed

1 pursuant to subsection 4 of this section with a dispute against  
2 the employer or insurer for any fees or other charges for  
3 services provided.

4 (6) A hospital, physician or other health care provider  
5 whose services have been authorized in advance by the employer or  
6 insurer may give notice to the division of any claim for fees or  
7 other charges for services provided for a work-related injury  
8 that is covered by this chapter, with copies of the notice to the  
9 employee, employer and the employer's insurer. Where such notice  
10 has been filed, the administrative law judge may order direct  
11 payment from the proceeds of any settlement or award to the  
12 hospital, physician or other health care provider for such fees  
13 as are determined by the division. The notice shall be on a form  
14 prescribed by the division.

15 14. The employer may allow or require an employee to use  
16 any of the employee's accumulated paid leave, personal leave, or  
17 medical or sick leave to attend to medical treatment, physical  
18 rehabilitation, or medical evaluations during work time. The  
19 intent of this subsection is to specifically supercede and  
20 abrogate any case law that contradicts the express language of  
21 this section.

22 287.165. Unless otherwise provided for under this chapter,  
23 interest for the purpose of this chapter shall be set at the  
24 adjusted rate of interest established by the director of revenue  
25 pursuant to section 32.065.

26 287.210. 1. After an employee has received an injury he  
27 shall from time to time thereafter during disability submit to  
28 reasonable medical examination at the request of the employer,

1 [his] the employer's insurer, the commission, the division [or],  
2 an administrative law judge, or the attorney general on behalf of  
3 the second injury fund if the employer has not obtained a medical  
4 examination report, the time and place of which shall be fixed  
5 with due regard to the convenience of the employee and his  
6 physical condition and ability to attend. The employee may have  
7 his own physician present, and if the employee refuses to submit  
8 to the examination, or in any way obstructs it, his right to  
9 compensation shall be forfeited during such period unless in the  
10 opinion of the commission the circumstances justify the refusal  
11 or obstruction.

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

24 3. The testimony of any physician who treated or examined  
25 the injured employee shall be admissible in evidence in any  
26 proceedings for compensation under this chapter, but only if the  
27 medical report of the physician has been made available to all  
28 parties as in this section provided. Immediately upon receipt of

1 notice from the division or the commission setting a date for  
2 hearing of a case in which the nature and extent of an employee's  
3 disability is to be determined, the parties or their attorneys  
4 shall arrange, without charge or costs, each to the other, for an  
5 exchange of all medical reports, including those made both by  
6 treating and examining physician or physicians, to the end that  
7 the parties may be commonly informed of all medical findings and  
8 opinions. The exchange of medical reports shall be made at least  
9 seven days before the date set for the hearing and failure of any  
10 party to comply may be grounds for asking for and receiving a  
11 continuance, upon proper showing by the party to whom the medical  
12 reports were not furnished. If any party fails or refuses to  
13 furnish the opposing party with the medical report of the  
14 treating or examining physician at least seven days before such  
15 physician's deposition or personal testimony at the hearing, as  
16 in this section provided, upon the objection of the party who was  
17 not provided with the medical report, the physician shall not be  
18 permitted to testify at that hearing or by medical deposition.

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

22 5. As used in this chapter the terms "physician's report"  
23 and "medical report" mean the report of any physician made on any  
24 printed form authorized by the division or the commission or any  
25 complete medical report. As used in this chapter the term  
26 "complete medical report" means the report of a physician giving  
27 the physician's qualifications and the patient's history,  
28 complaints, details of the findings of any and all laboratory,



1 X-ray and all other technical examinations, diagnosis, prognosis,  
2 nature of disability, if any, and an estimate of the percentage  
3 of permanent partial disability, if any. An element or elements  
4 of a complete medical report may be met by the physician's  
5 records.

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

13 7. The testimony of a treating or examining physician may  
14 be submitted in evidence on the issues in controversy by a  
15 complete medical report and shall be admissible without other  
16 foundational evidence subject to compliance with the following  
17 procedures. The party intending to submit a complete medical  
18 report in evidence shall give notice at least sixty days prior to  
19 the hearing to all parties and shall provide reasonable  
20 opportunity to all parties to obtain cross-examination testimony  
21 of the physician by deposition. The notice shall include a copy  
22 of the report and all the clinical and treatment records of the  
23 physician including copies of all records and reports received by  
24 the physician from other health care providers. The party  
25 offering the report must make the physician available for  
26 cross-examination testimony by deposition not later than seven  
27 days before the matter is set for hearing, and each  
28 cross-examiner shall compensate the physician for the portion of

1 testimony obtained in an amount not to exceed a rate of  
2 reasonable compensation taking into consideration the specialty  
3 practiced by the physician. Cross-examination testimony shall  
4 not bind the cross-examining party. Any testimony obtained by  
5 the offering party shall be at that party's expense on a  
6 proportional basis, including the deposition fee of the  
7 physician. Upon request of any party, the party offering a  
8 complete medical report in evidence must also make available  
9 copies of X rays or other diagnostic studies obtained by or  
10 relied upon by the physician. Within ten days after receipt of  
11 such notice a party shall dispute whether a report meets the  
12 requirements of a complete medical report by providing written  
13 objections to the offering party stating the grounds for the  
14 dispute, and at the request of any party, the administrative law  
15 judge shall rule upon such objections upon pretrial hearing  
16 whether the report meets the requirements of a complete medical  
17 report and upon the admissibility of the report or portions  
18 thereof. If no objections are filed the report is admissible,  
19 and any objections thereto are deemed waived. Nothing herein  
20 shall prevent the parties from agreeing to admit medical reports  
21 or records by consent. [The provisions of this subsection shall  
22 not apply to claims against the second injury fund.]

23 8. Certified copies of the proceedings before any coroner  
24 holding an inquest over the body of any employee receiving an  
25 injury in the course of his employment resulting in death shall  
26 be admissible in evidence in any proceedings for compensation  
27 under this chapter, and it shall be the duty of the coroner to  
28 give notice of the inquest to the employer and the dependents of

1 the deceased employee, who shall have the right to cross-examine  
2 the witness.

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

6 287.220. 1. There is hereby created in the state treasury  
7 a special fund to be known as the "Second Injury Fund" 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. All claims against the second injury fund for injuries  
22 occurring prior to the effective date of this section shall be  
23 compensated as provided in this subsection. All cases of  
24 permanent disability where there has been previous disability  
25 shall be compensated as herein provided. Compensation shall be  
26 computed on the basis of the average earnings at the time of the  
27 last injury. If any employee who has a preexisting permanent  
28 partial disability whether from compensable injury or otherwise,

1 of such seriousness as to constitute a hindrance or obstacle to  
2 employment or to obtaining reemployment if the employee becomes  
3 unemployed, and the preexisting permanent partial disability, if  
4 a body as a whole injury, equals a minimum of fifty weeks of  
5 compensation or, if a major extremity injury only, equals a  
6 minimum of fifteen percent permanent partial disability,  
7 according to the medical standards that are used in determining  
8 such compensation, receives a subsequent compensable injury  
9 resulting in additional permanent partial disability so that the  
10 degree or percentage of disability, in an amount equal to a  
11 minimum of fifty weeks compensation, if a body as a whole injury  
12 or, if a major extremity injury only, equals a minimum of fifteen  
13 percent permanent partial disability, caused by the combined  
14 disabilities is substantially greater than that which would have  
15 resulted from the last injury, considered alone and of itself,  
16 and if the employee is entitled to receive compensation on the  
17 basis of the combined disabilities, the employer at the time of  
18 the last injury shall be liable only for the degree or percentage  
19 of disability which would have resulted from the last injury had  
20 there been no preexisting disability. After the compensation  
21 liability of the employer for the last injury, considered alone,  
22 has been determined by an administrative law judge or the  
23 commission, the degree or percentage of employee's disability  
24 that is attributable to all injuries or conditions existing at  
25 the time the last injury was sustained shall then be determined  
26 by that administrative law judge or by the commission and the  
27 degree or percentage of disability which existed prior to the  
28 last injury plus the disability resulting from the last injury,

1 if any, considered alone, shall be deducted from the combined  
2 disability, and compensation for the balance, if any, shall be  
3 paid out of a special fund known as the second injury fund,  
4 hereinafter provided for. If the previous disability or  
5 disabilities, whether from compensable injury or otherwise, and  
6 the last injury together result in total and permanent  
7 disability, the minimum standards under this subsection for a  
8 body as a whole injury or a major extremity injury shall not  
9 apply and the employer at the time of the last injury shall be  
10 liable only for the disability resulting from the last injury  
11 considered alone and of itself; except that if the compensation  
12 for which the employer at the time of the last injury is liable  
13 is less than the compensation provided in this chapter for  
14 permanent total disability, then in addition to the compensation  
15 for which the employer is liable and after the completion of  
16 payment of the compensation by the employer, the employee shall  
17 be paid the remainder of the compensation that would be due for  
18 permanent total disability under section 287.200 out of [a  
19 special fund known as the "Second Injury Fund" hereby created  
20 exclusively for the purposes as in this section provided and for  
21 special weekly benefits in rehabilitation cases as provided in  
22 section 287.141. Maintenance of the second injury fund shall be  
23 as provided by section 287.710. The state treasurer shall be the  
24 custodian of the second injury fund which shall be deposited the  
25 same as are state funds and any interest accruing thereon shall  
26 be added thereto. The fund shall be subject to audit the same as  
27 state funds and accounts and shall be protected by the general  
28 bond given by the state treasurer. Upon the requisition of the

1 director of the division of workers' compensation, warrants on  
2 the state treasurer for the payment of all amounts payable for  
3 compensation and benefits out of the second injury fund shall be  
4 issued.

5 2.] the second injury fund.

6 3. All claims against the second injury fund for injuries  
7 occurring after the effective date of this section and all claims  
8 against the second injury fund involving a subsequent compensable  
9 injury which is an occupational disease filed after the effective  
10 date of this section shall be compensated as provided in this  
11 subsection.

12 (1) No claims for permanent partial disability occurring  
13 after the effective date of this section shall be filed against  
14 the second injury fund. Claims for permanent total disability  
15 under section 287.200 against the second injury fund shall be  
16 compensable only when all of the following conditions are met:

17 (a) An employee has a medically documented preexisting  
18 permanent partial disability as a direct result of active  
19 military duty in any branch of the United States armed forces or  
20 as a result of a preexisting permanent partial disability from a  
21 compensable injury as defined in section 287.020;

22 (b) Such preexisting disability equals a minimum of fifty  
23 weeks of permanent partial disability compensation according to  
24 the medical standards that are used in determining such  
25 compensation; and

26 (c) Such employee thereafter sustains a subsequent  
27 compensable work-related injury that, when combined with the  
28 preexisting disability, as set forth in paragraphs (a) and (b) of

1 this subdivision, results in a permanent total disability as  
2 defined under this chapter.

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

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

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

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

25 (a) For all claims filed prior to the effective date of  
26 this section, with the exception of permanent total disability  
27 claims, such settlement may be made in any amount not to exceed  
28 sixty thousand dollars; or

1       (b) For all permanent total disability claims, such  
2 settlement may be made in any amount not to exceed the sum of two  
3 hundred times the employee's permanent total disability rate as  
4 of the date of the injury.

5       (2) Notwithstanding subdivision (1) of this subsection to  
6 the contrary, the state treasurer, with the advice and consent of  
7 the attorney general, president pro tempore of the senate, and  
8 the speaker of the house of representatives, may enter into  
9 compromise settlements as contemplated by section 287.390 in any  
10 amount.

11       (3) The state treasurer, with the advice and consent of the  
12 attorney general, president pro tempore of the senate, and the  
13 speaker of the house of representatives, may enter into  
14 compromise settlements with dependents of claimants, whether  
15 finally adjudicated or not, arising from the Missouri supreme  
16 court's decision in Schoemehl v. Treasurer of Missouri, 217  
17 S.W.3d 900 (Mo. 2007).

18       (4) For all claims filed against the second injury fund on  
19 or after July 1, 1994, the attorney general shall use assistant  
20 attorneys general except in circumstances where an actual or  
21 potential conflict of interest exists, to provide legal services  
22 as may be required in all claims made for recovery against the  
23 fund. Any legal expenses incurred by the attorney general's  
24 office in the handling of such claims, including, but not limited  
25 to, medical examination fees incurred under sections 287.210 and  
26 the expenses provided for under section 287.140, expert witness  
27 fees, court reporter expenses, travel costs, and related legal  
28 expenses shall be paid by the fund. Effective July 1, 1993, the



1 payment of such legal expenses shall be contingent upon annual  
2 appropriations made by the general assembly, from the fund, to  
3 the attorney general's office for this specific purpose.

4 [3.] 5. If more than one injury in the same employment  
5 causes concurrent temporary disabilities, compensation shall be  
6 payable only for the longest and largest paying disability.

7 [4.] 6. If more than one injury in the same employment  
8 causes concurrent and consecutive permanent partial disability,  
9 compensation payments for each subsequent disability shall not  
10 begin until the end of the compensation period of the prior  
11 disability.

12 [5.] 7. If an employer fails to insure or self-insure as  
13 required in section 287.280, funds from the second injury fund  
14 may be withdrawn to cover the fair, reasonable, and necessary  
15 expenses incurred relating to claims for injuries occurring prior  
16 to the effective date of this section, to cure and relieve the  
17 effects of the injury or disability of an injured employee in the  
18 employ of an uninsured employer consistent with subsection 3 of  
19 section 287.140, or in the case of death of an employee in the  
20 employ of an uninsured employer, funds from the second injury  
21 fund may be withdrawn to cover fair, reasonable, and necessary  
22 expenses incurred relating to a death occurring prior to the  
23 effective date of this section, in the manner required in  
24 sections 287.240 and 287.241. In defense of claims arising under  
25 this subsection, the treasurer of the state of Missouri, as  
26 custodian of the second injury fund, shall have the same defenses  
27 to such claims as would the uninsured employer. Any funds  
28 received by the employee or the employee's dependents, through

1 civil or other action, must go towards reimbursement of the  
2 second injury fund, for all payments made to the employee, the  
3 employee's dependents, or paid on the employee's behalf, from the  
4 second injury fund pursuant to this subsection. The office of  
5 the attorney general of the state of Missouri shall bring suit in  
6 the circuit court of the county in which the accident occurred  
7 against any employer not covered by this chapter as required in  
8 section 287.280.

9 [6.] 8. Every [three years] year the second injury fund  
10 shall have an actuarial study made to determine the solvency of  
11 the fund taking into consideration any existing balance carried  
12 forward from a previous year, appropriate funding level of the  
13 fund, and forecasted expenditures from the fund. The first  
14 actuarial study shall be completed prior to July 1, [1988] 2014.  
15 The expenses of such actuarial studies shall be paid out of the  
16 fund for the support of the division of workers' compensation.

17 [7.] 9. The director of the division of workers'  
18 compensation shall maintain the financial data and records  
19 concerning the fund for the support of the division of workers'  
20 compensation and the second injury fund. The division shall also  
21 compile and report data on claims made pursuant to subsection 9  
22 of this section. The attorney general shall provide all  
23 necessary information to the division for this purpose.

24 [8.] 10. All claims for fees and expenses filed against the  
25 second injury fund and all records pertaining thereto shall be  
26 open to the public.

27 [9.] 11. Any employee who at the time a compensable  
28 work-related injury is sustained prior to the effective date of

1 this section is employed by more than one employer, the employer  
2 for whom the employee was working when the injury was sustained  
3 shall be responsible for wage loss benefits applicable only to  
4 the earnings in that employer's employment and the injured  
5 employee shall be entitled to file a claim against the second  
6 injury fund for any additional wage loss benefits attributed to  
7 loss of earnings from the employment or employments where the  
8 injury did not occur, up to the maximum weekly benefit less those  
9 benefits paid by the employer in whose employment the employee  
10 sustained the injury. The employee shall be entitled to a total  
11 benefit based on the total average weekly wage of such employee  
12 computed according to subsection 8 of section 287.250. The  
13 employee shall not be entitled to a greater rate of compensation  
14 than allowed by law on the date of the injury. The employer for  
15 whom the employee was working where the injury was sustained  
16 shall be responsible for all medical costs incurred in regard to  
17 that injury.

18 12. No compensation shall be payable from the second injury  
19 fund if the employee elects to pursue compensation under the  
20 workers' compensation law of another state with jurisdiction over  
21 the employee's injury or accident or occupational disease.

22 13. Notwithstanding the requirements of section 287.470,  
23 the life payments to an injured employee made from the fund shall  
24 be suspended when the employee is able to obtain suitable gainful  
25 employment or be self-employed in view of the nature and severity  
26 of the injury. The division shall promulgate rules setting forth  
27 a reasonable standard means test to determine if such employment  
28 warrants the suspension of benefits.

1           14. All awards issued under this chapter affecting the  
2 second injury fund shall be subject to the provisions of this  
3 chapter governing review and appeal.

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

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

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

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

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

14          (5) Interest on unpaid awards.

15  
16 Such liabilities shall be paid to the extent the fund has a  
17 positive balance. Any unpaid amounts shall remain an ongoing  
18 liability of the fund until satisfied.

19           287.690. [1.] Prior to December 31, 1993, for the purpose  
20 of providing for the expense of administering this chapter [and  
21 for the purpose set out in subsection 2 of this section], every  
22 person, partnership, association, corporation, whether organized  
23 under the laws of this or any other state or country, the state  
24 of Missouri, including any of its departments, divisions,  
25 agencies, commissions, and boards or any political subdivisions  
26 of the state who self-insure or hold themselves out to be any  
27 part self-insured, company, mutual company, the parties to any  
28 interindemnity contract, or other plan or scheme, and every other

1 insurance carrier, insuring employers in this state against  
2 liability for personal injuries to their employees, or for death  
3 caused thereby, under this chapter, shall pay, as provided in  
4 this chapter, tax upon the net deposits, net premiums or net  
5 assessments received, whether in cash or notes in this state, or  
6 on account of business done in this state, for such insurance in  
7 this state at the rate of two percent in lieu of all [other]  
8 premium taxes on such net deposits, net premiums or net  
9 assessments, which amount of taxes shall be assessed and  
10 collected as herein provided. Beginning October 31, 1993, and  
11 every year thereafter, the director of the division of workers'  
12 compensation shall estimate the amount of revenue required to  
13 administer this chapter and the division director shall determine  
14 the rate of tax to be paid in the following calendar year  
15 pursuant to this section commencing with the calendar year  
16 beginning on January 1, 1994. If the balance of the fund  
17 [estimated to be] on hand on [December thirty-first] July first  
18 of the year each tax rate determination is made on October  
19 thirty-first is less than one hundred ten percent of the previous  
20 year's expenses plus any additional revenue required due to new  
21 statutory requirements given to the division by the general  
22 assembly, then the division director shall impose a tax not to  
23 exceed two percent in lieu of all other taxes on net deposits,  
24 net premiums or net assessments, rounded up to the nearest  
25 one-half of a percentage point, which amount of taxes shall be  
26 assessed and collected as herein provided. The net premium  
27 equivalent for individual self-insured employers and any group of  
28 political subdivisions of this state qualified to self-insure

1 their liability pursuant to this chapter as authorized by section  
2 537.620 shall be based on average rate classifications calculated  
3 by the department of insurance, financial institutions and  
4 professional registration as taken from premium rates filed by  
5 the twenty insurance companies providing the greatest volume of  
6 workers' compensation insurance coverage in this state. For  
7 employers qualified to self-insure their liability pursuant to  
8 this chapter, the rates filed by such group of employers in  
9 accordance with subsection 2 of section 287.280 shall be the net  
10 premium equivalent. Every entity required to pay the tax imposed  
11 pursuant to this section and section 287.730 shall be notified by  
12 the division of workers' compensation within ten calendar days of  
13 the date of the determination of the rate of tax to be imposed  
14 for the following year. Net premiums, net deposits or net  
15 assessments are defined as gross premiums, gross deposits or  
16 gross assessments less canceled or returned premiums, premium  
17 deposits or assessments and less dividends or savings, actually  
18 paid or credited.

19 [2. After January 1, 1994, the director of the division  
20 shall make one or more loans to the Missouri employers mutual  
21 insurance company in an amount not to exceed an aggregate amount  
22 of five million dollars from the fund maintained to administer  
23 this chapter for start-up funding and initial capitalization of  
24 the company. The board of the company shall make application to  
25 the director for the loans, stating the amount to be loaned to  
26 the company. The loans shall be for a term of five years and, at  
27 the time the application for such loans is approved by the  
28 director, shall bear interest at the annual rate based on the

1 rate for linked deposit loans as calculated by the state  
2 treasurer pursuant to section 30.758.]

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,

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



1 policyholders by each insurer at the same time and in the same  
2 manner that the premium is collected, but no insurer or its agent  
3 shall be entitled to any portion of the surcharge as a fee or  
4 commission for its collection. The surcharge is not subject to  
5 any taxes, licenses or fees.

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

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

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

27 6. In order to maintain the fiscal solvency of the second  
28 injury fund, should the anticipated collections authorized in

1 subsection 2 of this section fail to be sufficient to meet its  
2 current and anticipated legal obligations, provide funds to  
3 settle cases, and provide funds for the administration of the  
4 fund for calendar years 2014, 2015, 2016, 2017, 2018, 2019, and  
5 2020, the director of the division of workers' compensation,  
6 shall determine the amount of revenue so required.

7 Notwithstanding subsection 2 of this section to the contrary,  
8 such necessary funds as determined by the director of the  
9 division of workers' compensation shall be collected with a  
10 supplemental surcharge, not to exceed three percent, calculated  
11 in like manner as authorized in subsection 2 of this section.

12 All policyholders and self-insurers shall be notified by the  
13 division of workers' compensation of the supplemental surcharge  
14 percent to be imposed for such period of time as part of the  
15 notice provided in subsection 2 of this section. The provisions  
16 of this subsection shall expire on December 31, 2020.

17 7. Once the number of pending cases is reduced to the point  
18 where the number of staff with the attorney general's office  
19 defending the second injury fund can be reduced from July 2013  
20 levels, the attorney general shall begin reducing such staff in  
21 proportion to the number of pending cases which remain.

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

24 287.745. 1. If the tax imposed by sections 287.690,  
25 287.710, and 287.715 are not paid when due, the taxpayer shall be  
26 required to pay, as part of such tax, interest thereon at the  
27 rate of one and one-half percent per month for each month or  
28 fraction thereof delinquent. In the event the state prevails in

1 any dispute concerning an assessment of tax which has not been  
2 paid by the taxpayer, interest shall be paid upon the amount  
3 found due to the state at the rate of one and one-half percent  
4 per month for each month or fraction thereof delinquent.

5 2. In any legal contest concerning the amount of tax under  
6 sections 287.690, 287.710 and 287.715 for a calendar year, the  
7 quarterly installments for the following year shall continue to  
8 be made based upon the amount assessed by the director of revenue  
9 for the year in question. If after the end of any taxable year,  
10 the amount of the actual tax due is less than the total amount of  
11 the installments actually paid, the amount by which the amount  
12 paid exceeds the amount due shall at the election of the taxpayer  
13 be refunded or credited against the tax for the following year  
14 and in the event of a credit, deducted from the quarterly  
15 installment otherwise due on June first.

16 Section B. Because it is necessary to ensure the solvency  
17 of the second injury fund, the enactment of section 287.165 and  
18 the repeal and reenactment of section 287.220 of this act is  
19 deemed necessary for the immediate preservation of the public  
20 health, welfare, peace and safety, and is hereby declared to be  
21 an emergency act within the meaning of the constitution, and the  
22 enactment of section 287.165 and the repeal and reenactment of  
23 section 287.220 of this act shall be in full force and effect  
24 upon its passage and approval.