

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1
AN ACT

To repeal sections 287.020, 287.067, 287.120, 287.140, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, and 287.745, RSMo, and to enact in lieu thereof eleven 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 287.020, 287.067, 287.120, 287.140,
2 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, and
3 287.745, RSMo, are repealed and eleven new sections enacted in
4 lieu thereof, to be known as sections 287.020, 287.067, 287.120,
5 287.140, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715,
6 and 287.745, to read as follows:

7 287.020. 1. The word "employee" as used in this chapter
8 shall be construed to mean every person in the service of any
9 employer, as defined in this chapter, under any contract of hire,
10 express or implied, oral or written, or under any appointment or
11 election, including executive officers of corporations. Except
12 as otherwise provided in section 287.200, any reference to any
13 employee who has been injured shall, when the employee is dead,
14 also include his dependents, and other persons to whom
15 compensation may be payable. The word "employee" shall also

1 include all minors who work for an employer, whether or not such
2 minors are employed in violation of law, and all such minors are
3 hereby made of full age for all purposes under, in connection
4 with, or arising out of this chapter. The word "employee" shall
5 not include an individual who is the owner, as defined in
6 subsection 43 of section 301.010, and operator of a motor vehicle
7 which is leased or contracted with a driver to a for-hire motor
8 carrier operating within a commercial zone as defined in section
9 390.020 or 390.041, or operating under a certificate issued by
10 the Missouri department of transportation or by the United States
11 Department of Transportation, or any of its subagencies.

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

18 3. (1) In this chapter the term "injury" is hereby defined
19 to be an injury which has arisen out of and in the course of
20 employment. An injury by accident is compensable only if the
21 accident was the prevailing factor in causing both the resulting
22 medical condition and disability. "The prevailing factor" is
23 defined to be the primary factor, in relation to any other
24 factor, causing both the resulting medical condition and
25 disability.

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

28 (a) It is reasonably apparent, upon consideration of all

1 the circumstances, that the accident is the prevailing factor in
2 causing the injury; and

3 (b) It does not come from a hazard or risk unrelated to the
4 employment to which workers would have been equally exposed
5 outside of and unrelated to the employment in normal
6 nonemployment life.

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

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

13 (5) The terms "injury" and "personal injuries" shall mean
14 violence to the physical structure of the body and to the
15 personal property which is used to make up the physical structure
16 of the body, such as artificial dentures, artificial limbs, glass
17 eyes, eyeglasses, and other prostheses which are placed in or on
18 the body to replace the physical structure and such disease or
19 infection as naturally results therefrom. These terms shall in
20 no case except as specifically provided in this chapter be
21 construed to include occupational disease in any form, nor shall
22 they be construed to include any contagious or infectious disease
23 contracted during the course of the employment, nor shall they
24 include death due to natural causes occurring while the worker is
25 at work.

26 4. "Death" when mentioned as a basis for the right to
27 compensation means only death resulting from such violence and
28 its resultant effects occurring within three hundred weeks after

1 the accident; except that in cases of occupational disease, the
2 limitation of three hundred weeks shall not be applicable.

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

13 6. The term "total disability" as used in this chapter
14 shall mean inability to return to any employment and not merely
15 mean inability to return to the employment in which the employee
16 was engaged at the time of the accident.

17 7. As used in this chapter and all acts amendatory thereof,
18 the term "commission" shall hereafter be construed as meaning and
19 referring exclusively to the labor and industrial relations
20 commission of Missouri, and the term "director" shall hereafter
21 be construed as meaning the director of the department of
22 insurance, financial institutions and professional registration
23 of the state of Missouri or such agency of government as shall
24 exercise the powers and duties now conferred and imposed upon the
25 department of insurance, financial institutions and professional
26 registration of the state of Missouri.

27 8. The term "division" as used in this chapter means the
28 division of workers' compensation of the department of labor and

1 industrial relations of the state of Missouri.

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

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

16 11. For the purposes of this chapter, "occupational
17 diseases due to toxic exposure" shall include the following:
18 mesothelioma, asbestosis, berylliosis, coal worker's
19 pneumoconiosis, brochiolitis obliterans, silicosis,
20 silicotuberculosis, manganism, acute myelogenous leukemia, and
21 myelodysplastic syndrome.

22 287.067. 1. In this chapter the term "occupational
23 disease" is hereby defined to mean, unless a different meaning is
24 clearly indicated by the context, an identifiable disease arising
25 with or without human fault out of and in the course of the
26 employment. Ordinary diseases of life to which the general
27 public is exposed outside of the employment shall not be
28 compensable, except where the diseases follow as an incident of

1 an occupational disease as defined in this section. The disease
2 need not to have been foreseen or expected but after its
3 contraction it must appear to have had its origin in a risk
4 connected with the employment and to have flowed from that source
5 as a rational consequence.

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

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

25 4. "Loss of hearing due to industrial noise" is recognized
26 as an occupational disease for purposes of this chapter and is
27 hereby defined to be a loss of hearing in one or both ears due to
28 prolonged exposure to harmful noise in employment. "Harmful

1 noise" means sound capable of producing occupational deafness.

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

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

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

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

1 be liable for such occupational disease.

2 287.120. 1. Every employer subject to the provisions of
3 this chapter shall be liable, irrespective of negligence, to
4 furnish compensation under the provisions of this chapter for
5 personal injury or death of the employee by accident or
6 occupational disease arising out of and in the course of the
7 employee's employment. Any employee of such employer shall not
8 be liable for any injury or death for which compensation is
9 recoverable under this chapter and every employer and employees
10 of such employer shall be released from all other liability
11 whatsoever, whether to the employee or any other person, except
12 that an employee shall not be released from liability for injury
13 or death if the employee engaged in an affirmative negligent act
14 that purposefully and dangerously caused or increased the risk of
15 injury. The term "accident" as used in this section shall
16 include, but not be limited to, injury or death of the employee
17 caused by the unprovoked violence or assault against the employee
18 by any person.

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

25 3. No compensation shall be allowed under this chapter for
26 the injury or death due to the employee's intentional
27 self-inflicted injury, but the burden of proof of intentional
28 self-inflicted injury shall be on the employer or the person

1 contesting the claim for allowance.

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

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

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

25 (2) If, however, the use of alcohol or nonprescribed
26 controlled drugs in violation of the employer's rule or policy is
27 the proximate cause of the injury, then the benefits or
28 compensation otherwise payable under this chapter for death or

1 disability shall be forfeited.

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

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

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

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

27 (3) The injury from such recreational activity or program
28 occurs on the employer's premises due to an unsafe condition and

1 the employer had actual knowledge of the employee's participation
2 in the recreational activity or program and of the unsafe
3 condition of the premises and failed to either curtail the
4 recreational activity or program or cure the unsafe condition.

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

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

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

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

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

1 treatment.

2 2. If it be shown to the division or the commission that
3 the requirements are being furnished in such manner that there is
4 reasonable ground for believing that the life, health, or
5 recovery of the employee is endangered thereby, the division or
6 the commission may order a change in the physician, surgeon,
7 hospital or other requirement.

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

21 4. The division shall, by regulation, establish methods to
22 resolve disputes concerning the reasonableness of medical
23 charges, services, or aids. This regulation shall govern
24 resolution of disputes between employers and medical providers
25 over fees charged, whether or not paid, and shall be in lieu of
26 any other administrative procedure under this chapter. The
27 employee shall not be a party to a dispute over medical charges,
28 nor shall the employee's recovery in any way be jeopardized

1 because of such dispute. Any application for payment of
2 additional reimbursement, as such term is used in 8 CSR 50-2.030,
3 as amended, shall be filed not later than:

4 (1) Two years from the date the medical services were
5 rendered if such services were rendered before July 1, 2013; and

6 (2) One year from the date the medical services were
7 rendered if such services were rendered on or after July 1, 2013.

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

17 6. The testimony of any physician or chiropractic physician
18 who treated the employee shall be admissible in evidence in any
19 proceedings for compensation under this chapter, subject to all
20 of the provisions of section 287.210.

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

28 8. The employer may be required by the division or the

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

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

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

28 11. Any physician or other health care provider who orders,

1 directs or refers a patient for treatment, testing, therapy or
2 rehabilitation at any institution or facility shall, at or prior
3 to the time of the referral, disclose in writing if such health
4 care provider, any of his partners or his employer has a
5 financial interest in the institution or facility to which the
6 patient is being referred, to the following:

7 (1) The patient;

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

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

11 (4) The workers' compensation adjusting company for such
12 insurer.

13 12. Violation of subsection 11 of this section is a class A
14 misdemeanor.

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

1 (2) The notice shall include:
2 (a) The name of the employer;
3 (b) The name of the insurer, if known;
4 (c) The name of the employee receiving the services;
5 (d) The general nature of the injury, if known; and
6 (e) Where a claim has been filed, the claim number, if
7 known.

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

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

1 (5) If an employer or insurer fails to make payment for
2 authorized services provided to the employee by a hospital,
3 physician or other health care provider pursuant to this chapter,
4 the hospital, physician or other health care provider may proceed
5 pursuant to subsection 4 of this section with a dispute against
6 the employer or insurer for any fees or other charges for
7 services provided.

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

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

26 287.200. 1. Compensation for permanent total disability
27 shall be paid during the continuance of such disability for the
28 lifetime of the employee at the weekly rate of compensation in

1 effect under this subsection on the date of the injury for which
2 compensation is being made. The word "employee" as used in this
3 section shall not include the injured worker's dependents,
4 estate, or other persons to whom compensation may be payable as
5 provided in subsection 1 of section 287.020. The amount of such
6 compensation shall be computed as follows:

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

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

27 (3) For all injuries occurring on or after August 28, 1990,
28 but before August 28, 1991, the weekly compensation shall be an

1 amount equal to sixty-six and two-thirds percent of the injured
2 employee's average weekly earnings as of the date of the injury;
3 provided that the weekly compensation paid under this subdivision
4 shall not exceed an amount equal to one hundred percent of the
5 state average weekly wage;

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

13 (5) For all injuries occurring on or after September 28,
14 1981, the weekly compensation shall in no event be less than
15 forty dollars per week.

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

25 3. All claims for permanent total disability shall be
26 determined in accordance with the facts. When an injured
27 employee receives an award for permanent total disability but by
28 the use of glasses, prosthetic appliances, or physical

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

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

17 (1) Such amount as due to the employee during said
18 employee's life as provided for under this chapter for an award
19 of permanent total disability and death; and

20 (2) An amount equal to two hundred percent of the state's
21 average weekly wage as of the date of diagnosis for one hundred
22 weeks; and

23 (3) In cases where occupational diseases due to toxic
24 exposure are found to be mesothelioma and the employer is a
25 manufacturer of asbestos, an additional amount of two hundred
26 percent of the state's average weekly wage for two hundred
27 twenty-five weeks shall be paid by such employer; and

28 (4) The provisions of subdivisions 2 and 3 of this

1 subsection shall not be subject to suspension of benefits as
2 provided in subsection 3 of this section; and

3 (5) Notwithstanding any other provision of this chapter to
4 the contrary, should the employee die before the additional
5 benefits provided for in subdivisions 2 and 3 of this subsection
6 are paid, the additional benefits are payable to the employee's
7 spouse or children, natural or adopted, legitimate or
8 illegitimate, in addition to benefits provided under section
9 287.240. If there is no surviving spouse or children and the
10 employee has received less than the additional benefits provided
11 for in subdivisions 2 and 3 of this subsection the remainder of
12 such additional benefits shall be paid as a single payment to the
13 estate of the employee.

14 287.210. 1. After an employee has received an injury he
15 shall from time to time thereafter during disability submit to
16 reasonable medical examination at the request of the employer,
17 [his] the employer's insurer, the commission, the division [or],
18 an administrative law judge, or the attorney general on behalf of
19 the second injury fund if the employer has not obtained a medical
20 examination report, the time and place of which shall be fixed
21 with due regard to the convenience of the employee and his
22 physical condition and ability to attend. The employee may have
23 his own physician present, and if the employee refuses to submit
24 to the examination, or in any way obstructs it, his right to
25 compensation shall be forfeited during such period unless in the
26 opinion of the commission the circumstances justify the refusal
27 or obstruction.

28 2. The commission, the division or administrative law judge

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

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

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

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

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

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

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

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

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

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

22 287.220. 1. There is hereby created in the state treasury
23 a special fund to be known as the "Second Injury Fund" created
24 exclusively for the purposes as in this section provided and for
25 special weekly benefits in rehabilitation cases as provided in
26 section 287.141. A subaccount is established within the second
27 injury fund that shall contain all revenue collected under
28 subsection 7 of section 287.715 that shall be used solely for

1 payment of awards issued pursuant to subdivision 2 of subsection
2 4 of this section. Maintenance of the second injury fund shall
3 be as provided by section 287.710. The state treasurer shall be
4 the custodian of the second injury fund which shall be deposited
5 the same as are state funds and any interest accruing thereon
6 shall be added thereto. The fund shall be subject to audit the
7 same as state funds and accounts and shall be protected by the
8 general bond given by the state treasurer. Upon the requisition
9 of the director of the division of workers' compensation,
10 warrants on the state treasurer for the payment of all amounts
11 payable for compensation and benefits out of the second injury
12 fund shall be issued.

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

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

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

25 2.] the second injury fund.

26 3. All claims against the second injury fund for injuries
27 occurring after the effective date of this section and all claims
28 against the second injury fund involving a subsequent compensable

1 injury which is an occupational disease filed after the effective
2 date of this section shall be compensated as provided in this
3 subsection.

4 (1) No claims for permanent partial disability occurring
5 after the effective date of this section shall be filed against
6 the second injury fund. Claims for permanent total disability
7 under section 287.200 against the second injury fund shall be
8 compensable only when all of the following conditions are met:

9 (a) An employee has a medically documented preexisting
10 disability equaling a minimum of fifty weeks of permanent partial
11 disability compensation according to the medical standards that
12 are used in determining such compensation which is:

13 a. A direct result of active military duty in any branch of
14 the United States armed forces; or

15 b. A direct result of a compensable injury as defined in
16 section 287.020; or

17 c. Not a compensable injury, but such preexisting
18 disability directly and significantly aggravates or accelerates
19 the subsequent work-related injury and shall not include
20 unrelated preexisting injuries that do not aggravate or
21 accelerate the subsequent work-related injury; or

22 d. A preexisting permanent partial disability of an
23 extremity, loss of eyesight in one eye, or loss of hearing in one
24 ear, when there is an subsequent compensable work-related injury
25 as set forth in paragraph (b) of the opposite extremity, loss of
26 eyesight in the other eye, or loss of hearing in the other ear;
27 and

28 (b) Such employee thereafter sustains a subsequent

1 compensable work-related injury that, when combined with the
2 preexisting disability, as set forth in subparagraphs a, b, c, or
3 d of paragraph (a) of this subdivision, results in a permanent
4 total disability as defined under this chapter.

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

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

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

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

27 (a) For all claims filed prior to the effective date of
28 this section, with the exception of permanent total disability

1 claims, such settlement may be made in any amount not to exceed
2 sixty thousand dollars; or

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

7 (2) Notwithstanding subdivision (1) of this subsection to
8 the contrary, the state treasurer, with the advice and consent of
9 the attorney general and the state auditor, may enter into
10 compromise settlements as contemplated by section 287.390 in any
11 amount.

12 (3) The state treasurer, with the advice and consent of the
13 attorney general and the state auditor, may enter into compromise
14 settlements with dependents of claimants, whether finally
15 adjudicated or not, arising from the Missouri supreme court's
16 decision in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900
17 (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. Funds from the second injury fund may be withdrawn to
5 cover awards for toxic exposure issued pursuant to subdivision 2
6 of subsection 4 of section 287.200. This subsection shall not be
7 construed to cover awards for a disability otherwise provided in
8 this chapter.

9 16. The division shall pay any liabilities of the fund in
10 the following priority:

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

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

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

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

19 (5) Interest on unpaid awards.

20
21 Such liabilities shall be paid to the extent the fund has a
22 positive balance. Any unpaid amounts shall remain an ongoing
23 liability of the fund until satisfied.

24 17. Post award interest for the purpose of second injury
25 fund claims shall be set at the adjusted rate of interest
26 established by the director of revenue pursuant to section 32.065
27 or five percent, whichever is greater.

28 287.610. 1. After August 28, 2005, the division may

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

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

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

1 [4.] 3. The administrative law judge review committee
2 members shall not have any direct or indirect employment or
3 financial connection with a workers' compensation insurance
4 company, claims adjustment company, health care provider nor be a
5 practicing workers' compensation attorney. All members of the
6 committee shall have a working knowledge of workers'
7 compensation.

8 [5.] 4. The committee shall within thirty days of
9 completing each performance audit make a recommendation of
10 confidence or no confidence for each administrative law judge.

11 [6.] 5. The administrative law judges appointed by the
12 division shall only have jurisdiction to hear and determine
13 claims upon original hearing and shall have no jurisdiction upon
14 any review hearing, either in the way of an appeal from an
15 original hearing or by way of reopening any prior award, except
16 to correct a clerical error in an award or settlement if the
17 correction is made by the administrative law judge within twenty
18 days of the original award or settlement. The labor and
19 industrial relations commission may remand any decision of an
20 administrative law judge for a more complete finding of facts.
21 The commission may also correct a clerical error in awards or
22 settlements within thirty days of its final award. With respect
23 to original hearings, the administrative law judges shall have
24 such jurisdiction and powers as are vested in the division of
25 workers' compensation under other sections of this chapter, and
26 wherever in this chapter the word "commission", "commissioners"
27 or "division" is used in respect to any original hearing, those
28 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

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

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

1 [10.] 9. No rule or portion of a rule promulgated pursuant
2 to the authority of this section shall become effective unless it
3 has been promulgated pursuant to the provisions of chapter 536.

4 287.690. [1.] Prior to December 31, 1993, for the purpose
5 of providing for the expense of administering this chapter [and
6 for the purpose set out in subsection 2 of this section], every
7 person, partnership, association, corporation, whether organized
8 under the laws of this or any other state or country, the state
9 of Missouri, including any of its departments, divisions,
10 agencies, commissions, and boards or any political subdivisions
11 of the state who self-insure or hold themselves out to be any
12 part self-insured, company, mutual company, the parties to any
13 interindemnity contract, or other plan or scheme, and every other
14 insurance carrier, insuring employers in this state against
15 liability for personal injuries to their employees, or for death
16 caused thereby, under this chapter, shall pay, as provided in
17 this chapter, tax upon the net deposits, net premiums or net
18 assessments received, whether in cash or notes in this state, or
19 on account of business done in this state, for such insurance in
20 this state at the rate of two percent in lieu of all [other]
21 premium taxes on such net deposits, net premiums or net
22 assessments, which amount of taxes shall be assessed and
23 collected as herein provided. Beginning October 31, 1993, and
24 every year thereafter, the director of the division of workers'
25 compensation shall estimate the amount of revenue required to
26 administer this chapter and the division director shall determine
27 the rate of tax to be paid in the following calendar year
28 pursuant to this section commencing with the calendar year

1 beginning on January 1, 1994. If the balance of the fund
2 [estimated to be] on hand on [December thirty-first] July first
3 of the year each tax rate determination is made on October
4 thirty-first is less than one hundred ten percent of the previous
5 year's expenses plus any additional revenue required due to new
6 statutory requirements given to the division by the general
7 assembly, then the division director shall impose a tax not to
8 exceed two percent in lieu of all other taxes on net deposits,
9 net premiums or net assessments, rounded up to the nearest
10 one-half of a percentage point, which amount of taxes shall be
11 assessed and collected as herein provided. The net premium
12 equivalent for individual self-insured employers and any group of
13 political subdivisions of this state qualified to self-insure
14 their liability pursuant to this chapter as authorized by section
15 537.620 shall be based on average rate classifications calculated
16 by the department of insurance, financial institutions and
17 professional registration as taken from premium rates filed by
18 the twenty insurance companies providing the greatest volume of
19 workers' compensation insurance coverage in this state. For
20 employers qualified to self-insure their liability pursuant to
21 this chapter, the rates filed by such group of employers in
22 accordance with subsection 2 of section 287.280 shall be the net
23 premium equivalent. Every entity required to pay the tax imposed
24 pursuant to this section and section 287.730 shall be notified by
25 the division of workers' compensation within ten calendar days of
26 the date of the determination of the rate of tax to be imposed
27 for the following year. Net premiums, net deposits or net
28 assessments are defined as gross premiums, gross deposits or

1 gross assessments less canceled or returned premiums, premium
2 deposits or assessments and less dividends or savings, actually
3 paid or credited.

4 [2. After January 1, 1994, the director of the division
5 shall make one or more loans to the Missouri employers mutual
6 insurance company in an amount not to exceed an aggregate amount
7 of five million dollars from the fund maintained to administer
8 this chapter for start-up funding and initial capitalization of
9 the company. The board of the company shall make application to
10 the director for the loans, stating the amount to be loaned to
11 the company. The loans shall be for a term of five years and, at
12 the time the application for such loans is approved by the
13 director, shall bear interest at the annual rate based on the
14 rate for linked deposit loans as calculated by the state
15 treasurer pursuant to section 30.758.]

16 287.715. 1. For the purpose of providing for revenue for
17 the second injury fund, every authorized self-insurer, and every
18 workers' compensation policyholder insured pursuant to the
19 provisions of this chapter, shall be liable for payment of an
20 annual surcharge in accordance with the provisions of this
21 section. The annual surcharge imposed under this section shall
22 apply to all workers' compensation insurance policies and
23 self-insurance coverages which are written or renewed on or after
24 April 26, 1988, including the state of Missouri, including any of
25 its departments, divisions, agencies, commissions, and boards or
26 any political subdivisions of the state who self-insure or hold
27 themselves out to be any part self-insured. Notwithstanding any
28 law to the contrary, the surcharge imposed pursuant to this

1 section shall not apply to any reinsurance or retrocessional
2 transaction.

3 2. Beginning October 31, 2005, and each year thereafter,
4 the director of the division of workers' compensation shall
5 estimate the amount of benefits payable from the second injury
6 fund during the following calendar year and shall calculate the
7 total amount of the annual surcharge to be imposed during the
8 following calendar year upon all workers' compensation
9 policyholders and authorized self-insurers. The amount of the
10 annual surcharge percentage to be imposed upon each policyholder
11 and self-insured for the following calendar year commencing with
12 the calendar year beginning on January 1, 2006, shall be set at
13 and calculated against a percentage, not to exceed three percent,
14 of the policyholder's or self-insured's workers' compensation net
15 deposits, net premiums, or net assessments for the previous
16 policy year, rounded up to the nearest one-half of a percentage
17 point, that shall generate, as nearly as possible, one hundred
18 ten percent of the moneys to be paid from the second injury fund
19 in the following calendar year, less any moneys contained in the
20 fund at the end of the previous calendar year. All policyholders
21 and self-insurers shall be notified by the division of workers'
22 compensation within ten calendar days of the determination of the
23 surcharge percent to be imposed for, and paid in, the following
24 calendar year. The net premium equivalent for individual
25 self-insured employers and any group of political subdivisions of
26 this state qualified to self-insure their liability pursuant to
27 this chapter as authorized by section 537.620 shall be based on
28 average rate classifications calculated by the department of

1 insurance, financial institutions and professional registration
2 as taken from premium rates filed by the twenty insurance
3 companies providing the greatest volume of workers' compensation
4 insurance coverage in this state. For employers qualified to
5 self-insure their liability pursuant to this chapter, the rates
6 filed by such group of employers in accordance with subsection 2
7 of section 287.280 shall be the net premium equivalent. The
8 director may advance funds from the workers' compensation fund to
9 the second injury fund if surcharge collections prove to be
10 insufficient. Any funds advanced from the workers' compensation
11 fund to the second injury fund must be reimbursed by the second
12 injury fund no later than December thirty-first of the year
13 following the advance. The surcharge shall be collected from
14 policyholders by each insurer at the same time and in the same
15 manner that the premium is collected, but no insurer or its agent
16 shall be entitled to any portion of the surcharge as a fee or
17 commission for its collection. The surcharge is not subject to
18 any taxes, licenses or fees.

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

21 4. Such surcharge amounts shall be paid quarterly by
22 insurers and self-insurers, and insurers shall pay the amounts
23 not later than the thirtieth day of the month following the end
24 of the quarter in which the amount is received from
25 policyholders. If the director of the division of workers'
26 compensation fails to calculate the surcharge by the thirty-first
27 day of October of any year for the following year, any increase
28 in the surcharge ultimately set by the director shall not be

1 effective for any calendar quarter beginning less than sixty days
2 from the date the director makes such determination.

3 5. If a policyholder or self-insured fails to make payment
4 of the surcharge or an insurer fails to make timely transfer to
5 the division of surcharges actually collected from policyholders,
6 as required by this section, a penalty of one-half of one percent
7 of the surcharge unpaid, or untransferred, shall be assessed
8 against the liable policyholder, self-insured or insurer.
9 Penalties assessed under this subsection shall be collected in a
10 civil action by a summary proceeding brought by the director of
11 the division of workers' compensation.

12 6. In order to maintain the fiscal solvency of the second
13 injury fund, should the anticipated collections authorized in
14 subsection 2 of this section fail to be sufficient to meet its
15 current and anticipated legal obligations, provide funds to
16 settle cases, and provide funds for the administration of the
17 fund for the third and fourth quarter of calendar year 2013 and
18 for calendar years 2014, 2015, 2016, 2017, 2018, 2019, and 2020,
19 the director of the division of workers' compensation, shall
20 determine the amount of revenue so required. Notwithstanding
21 subsection 2 of this section to the contrary, such necessary
22 funds as determined by the director of the division of workers'
23 compensation shall be collected with a supplemental surcharge,
24 not to exceed one and one-half percent for the calendar year 2013
25 and not to exceed three percent for the remaining calendar years
26 through 2020. All policyholders and self-insurers shall be
27 notified by the division of workers' compensation of the
28 supplemental surcharge percent to be imposed for such period of

1 time as part of the notice provided in subsection 2 of this
2 section, except for the supplemental surcharge percent for the
3 third and fourth quarters of calendar year 2013 for which notice
4 shall be provided within ten calendar days of the determination
5 of the supplemental surcharge to be imposed for those quarters.
6 The provisions of this subsection shall expire on December 31,
7 2020.

8 7. Beginning July 1, 2013, and each calendar year
9 thereafter, the director of the division of workers compensation
10 shall estimate the amount of benefits payable from the second
11 injury fund relating to awards issued pursuant to subdivision (2)
12 of subsection 4 of section 287.200 during the following calendar
13 year and shall calculate the total amount of the second injury
14 fund surcharge to be imposed during the following calendar year
15 upon all workers' compensation policyholders and authorized self-
16 insurers. Notwithstanding subsection 2 of this section to the
17 contrary, such surcharge shall be set by the director based on
18 the average number of awards for such diseases in the three years
19 preceding the year in which such rates are set, multiplied by the
20 benefit allowed in subdivision (2) of subsection 4 of section
21 287.200. In addition, the surcharge shall be increased in an
22 amount to collect a cash reserve of up to fifty percent of the
23 surcharge established in this section, until such time that a one
24 year reserve has been accumulated. All revenue collected under
25 this subsection shall be deposited in the subaccount established
26 in subsection 1 of section 287.220 and such revenue shall only be
27 used to satisfy awards issued pursuant to subdivision (2) of
28 subsection 4 of section 287.200. All policyholders and self-

1 insurers shall be notified by the division of workers'
2 compensation of the toxic exposure supplemental surcharge percent
3 to be imposed for such period of time as part of the notice
4 provided in subsections 2 and 6 of this section.

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

7 287.745. 1. If the tax imposed by sections 287.690,
8 287.710, and 287.715 are not paid when due, the taxpayer shall be
9 required to pay, as part of such tax, interest thereon at the
10 rate of one and one-half percent per month for each month or
11 fraction thereof delinquent. In the event the state prevails in
12 any dispute concerning an assessment of tax which has not been
13 paid by the taxpayer, interest shall be paid upon the amount
14 found due to the state at the rate of one and one-half percent
15 per month for each month or fraction thereof delinquent.

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

27 Section B. Because it is necessary to ensure the solvency
28 of the second injury fund, the repeal and reenactment of section

1 287.220 of this act is deemed necessary for the immediate
2 preservation of the public health, welfare, peace and safety, and
3 is hereby declared to be an emergency act within the meaning of
4 the constitution, and the repeal and reenactment of section
5 287.220 of this act shall be in full force and effect upon its
6 passage and approval.