FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1
97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, January 29, 2013, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

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:

Section A. Sections 287.067, 287.120, 287.140, 287.210, 287.220, 287.690, 287.715, and 287.745, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 287.067, 287.120, 287.140, 287.165, 287.210, 287.220, 287.690, 287.715, and 287.745, to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

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

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive...

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the
employer, the matter shall be presented to the legal advisor, the administrative
law judge or the commission, who shall set the sum to be paid and same shall be
paid by the employer prior to the medical examination. In no event, however,
shall the employer or its insurer be required to pay transportation costs for a
greater distance than two hundred fifty miles each way from place of treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The testimony of any physician who treated or examined the injured employee shall be admissible in evidence in any proceedings for compensation under this chapter, but only if the medical report of the physician has been made available to all parties as in this section provided. Immediately upon receipt of notice from the division or the commission setting a date for hearing of a case in which the nature and extent of an employee's disability is to be determined, the parties or their attorneys shall arrange, without charge or costs, each to the other, for an exchange of all medical reports, including those made both by treating and examining physician or physicians, to the end that the parties may be commonly informed of all medical findings and opinions. The exchange of medical reports shall be made at least seven days before the date set for the hearing and failure of any party to comply may be grounds for asking for and receiving a continuance, upon proper showing by the party to whom the medical reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical report of the treating or examining physician at least seven days before such physician's deposition or personal testimony at the hearing, as in this section provided, upon the objection of the party who was not provided with the medical report, the physician shall not be permitted to testify at that hearing or by medical deposition.
4. Upon request, an administrative law judge, the division, or the commission shall be provided with a copy of any medical report.

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

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

7. The testimony of a treating or examining physician may be submitted in evidence on the issues in controversy by a complete medical report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit a complete medical report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the physician by deposition. The notice shall include a copy of the report and all the clinical and treatment records of the physician including copies of all records and reports received by the physician from other health care providers. The party offering the report must make the physician available for cross-examination testimony by deposition not later than seven days before the matter is set for hearing, and each cross-examiner shall compensate the physician for the portion of testimony obtained in an amount not to exceed a rate of reasonable compensation taking into consideration the specialty practiced by the physician. Cross-examination testimony shall not bind the cross-examining party. Any testimony obtained by the offering party shall be at that party's expense on a proportional basis, including the deposition fee of the physician. Upon request of any party, the party offering a complete medical report in evidence must also make available copies of X rays or other diagnostic
studies obtained by or relied upon by the physician. Within ten days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report by providing written objections to the offering party stating the grounds for the dispute, and at the request of any party, the administrative law judge shall rule upon such objections upon pretrial hearing whether the report meets the requirements of a complete medical report and upon the admissibility of the report or portions thereof. If no objections are filed the report is admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the parties from agreeing to admit medical reports or records by consent. [The provisions of this subsection shall not apply to claims against the second injury fund.]

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

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

287.220. 1. There is hereby created in the state treasury a special fund to be known as the "Second Injury Fund" created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

2. All claims against the second injury fund for injuries occurring prior to the effective date of this section shall be
compensated as provided in this subsection. All cases of permanent
disability where there has been previous disability shall be compensated as
herein provided. Compensation shall be computed on the basis of the average
earnings at the time of the last injury. If any employee who has a preexisting
permanent partial disability whether from compensable injury or otherwise, of
such seriousness as to constitute a hindrance or obstacle to employment or to
obtaining reemployment if the employee becomes unemployed, and the preexisting
permanent partial disability, if a body as a whole injury, equals a minimum of
fifty weeks of compensation or, if a major extremity injury only, equals a
minimum of fifteen percent permanent partial disability, according to the medical
standards that are used in determining such compensation, receives a subsequent
compensable injury resulting in additional permanent partial disability so that
the degree or percentage of disability, in an amount equal to a minimum of fifty
weeks compensation, if a body as a whole injury or, if a major extremity injury
only, equals a minimum of fifteen percent permanent partial disability, caused
by the combined disabilities is substantially greater than that which would have
resulted from the last injury, considered alone and of itself, and if the employee
is entitled to receive compensation on the basis of the combined disabilities, the
employer at the time of the last injury shall be liable only for the degree or
percentage of disability which would have resulted from the last injury had there
been no preexisting disability. After the compensation liability of the employer
for the last injury, considered alone, has been determined by an administrative
law judge or the commission, the degree or percentage of employee’s disability
that is attributable to all injuries or conditions existing at the time the last injury
was sustained shall then be determined by that administrative law judge or by
the commission and the degree or percentage of disability which existed prior to
the last injury plus the disability resulting from the last injury, if any, considered
alone, shall be deducted from the combined disability, and compensation for the
balance, if any, shall be paid out of a special fund known as the second injury
fund, hereinafter provided for. If the previous disability or disabilities, whether
from compensable injury or otherwise, and the last injury together result in total
and permanent disability, the minimum standards under this subsection for a
body as a whole injury or a major extremity injury shall not apply and the
employer at the time of the last injury shall be liable only for the disability
resulting from the last injury considered alone and of itself; except that if the
compensation for which the employer at the time of the last injury is liable is less
than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of [a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

2. the second injury fund.

3. All claims against the second injury fund for injuries occurring after the effective date of this section shall be compensated as provided in this subsection.

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

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

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

(c) Such employee thereafter sustains a subsequent compensable work-related injury that, when combined with the preexisting disability, as set forth in paragraphs (a) and (b) of this subdivision,
results in a permanent total disability as defined under this chapter.

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

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

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

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

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

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

(2) Notwithstanding subdivision (1) of this subsection to the contrary, the state treasurer, with the advice and consent of the attorney general and with the express authorization of the majority of the second injury fund commission, may enter into compromise settlements as contemplated by section 287.390 in any amount.

(3) The state treasurer, with the advice and consent of the attorney general and with the express authorization of a majority of the second injury fund commission, may enter into compromise settlements with dependents of claimants, whether finally adjudicated or not, arising from the Missouri supreme court's decision in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).

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

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

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

[5.] 7. If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses incurred relating to claims for injuries occurring prior to the effective date of this section, to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer consistent with subsection 3 of section 287.140, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses incurred relating to a death occurring prior to the effective date of this section, in the manner required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same defenses to such claims as would the uninsured employer. Any funds received by the employee or the employee's dependents, through civil or other action, must go towards reimbursement of the second injury fund, for all payments made to the employee, the employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri shall bring suit in the circuit court of the county in which
the accident occurred against any employer not covered by this chapter as
required in section 287.280.

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

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

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

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

12. No compensation shall be payable from the second injury
fund if the employee elects to pursue compensation under the workers'
compensation law of another state with jurisdiction over the employee's
injury or accident or occupational disease.
13. Notwithstanding the requirements of section 287.470, the life payments to an injured employee made from the fund shall be suspended when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. The division shall promulgate rules setting forth a reasonable standard means test to determine if such employment warrants the suspension of benefits.

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

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

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

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

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

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

   (5) Interest on unpaid awards.

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

287.690. [1.] Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter [and for the purpose set out in subsection 2 of this section], every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in this state at the rate of two
percent in lieu of all [other] premium taxes on such net deposits, net premiums or net assessments, which amount of taxes shall be assessed and collected as herein provided. Beginning October 31, 1993, and every year thereafter, the director of the division of workers' compensation shall estimate the amount of revenue required to administer this chapter and the division director shall determine the rate of tax to be paid in the following calendar year pursuant to this section commencing with the calendar year beginning on January 1, 1994. If the balance of the fund [estimated to be] on hand on [December thirty-first] July first of the year each tax rate determination is made on October thirty-first is less than one hundred ten percent of the previous year's expenses plus any additional revenue required due to new statutory requirements given to the division by the general assembly, then the division director shall impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments, rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed and collected as herein provided. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following year. Net premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross assessments less canceled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

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

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

2. Beginning October 31, 2005, and each year thereafter, the director of
the division of workers' compensation shall estimate the amount of benefits
payable from the second injury fund during the following calendar year and shall
calculate the total amount of the annual surcharge to be imposed during the
following calendar year upon all workers' compensation policyholders and
authorized self-insurers. The amount of the annual surcharge percentage to be
imposed upon each policyholder and self-insured for the following calendar year
commencing with the calendar year beginning on January 1, 2006, shall be set at
and calculated against a percentage, not to exceed three percent, of the
policyholder's or self-insured's workers' compensation net deposits, net premiums,
or net assessments for the previous policy year, rounded up to the nearest
one-half of a percentage point, that shall generate, as nearly as possible, one
hundred ten percent of the moneys to be paid from the second injury fund in the
following calendar year, less any moneys contained in the fund at the end of the
previous calendar year. All policyholders and self-insurers shall be notified by
the division of workers' compensation within ten calendar days of the
determination of the surcharge percent to be imposed for, and paid in, the
following calendar year. The net premium equivalent for individual self-insured
employers and any group of political subdivisions of this state qualified to
self-insure their liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

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

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

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

6. In order to maintain the fiscal solvency of the second injury fund, should the anticipated collections authorized in subsection 2 of
this section fail to be sufficient to meet its current and anticipated legal obligations, provide funds to settle cases, and provide funds for the administration of the fund for calendar years 2014, 2015, 2016, 2017, 2018, 2019, and 2020, the director of the division of workers' compensation, shall determine the amount of revenue so required. Notwithstanding subsection 2 of this section to the contrary, such necessary funds as determined by the director of the division of workers' compensation shall be collected with a supplemental surcharge, not to exceed one and one-half percent, calculated in like manner as authorized in subsection 2 of this section. All policyholders and self-insurers shall be notified by the division of workers' compensation of the supplemental surcharge percent to be imposed for such period of time as part of the notice provided in subsection 2 of this section. The provisions of this subsection shall expire on December 31, 2020.

7. In order to maintain the fiscal solvency of the second injury fund, should the anticipated collections authorized in subsections 2 and 6 of this section fail to be sufficient to meet its current and anticipated legal obligations, provide funds to settle cases, and provide funds for the administration of the fund for calendar years 2015, 2016, 2017, 2018, 2019, and 2020, the second injury fund commission shall determine on or before October thirty-first the amount of revenue so required for the following calendar year. Notwithstanding subsection 2 of this section to the contrary, such necessary funds as determined by the second injury fund commission shall be collected with a supplemental surcharge, not to exceed one and one-half percent, calculated in like manner as authorized in subsection 2 of this section. All policyholders and self-insurers shall be notified by the division of workers' compensation of the supplemental surcharge percent to be imposed for such period of time as part of the notice provided in subsection 2 of this section. The provisions of this subsection shall expire on December 31, 2020.

8. Once the number of pending cases is reduced to the point where the number of staff with the attorney general's office defending the second injury fund can be reduced from July 2013 levels, the attorney general shall begin reducing such staff in proportion to the number of pending cases which remain.
9. Funds collected under the provisions of this chapter shall be the sole funding source of the second injury fund.

10. The "Second Injury Fund Commission" is hereby established. The second injury fund commission shall be composed of four members including the governor, the attorney general, the president pro tem of the senate, and the speaker of the house of representatives. Commission members may not appoint a designee to serve in their absence. The second injury fund commission shall convene as necessary as determined by the governor. The second injury fund commission shall also reconvene within thirty days of any official written request submitted to the governor by any member of the second injury fund commission. The surcharge amount as authorized under subsection 7 of this section shall be reviewed and established annually by the second injury fund commission by a three-fourths vote. The office of attorney general and the division of workers' compensation shall provide technical assistance and support to the members of the second injury fund commission, for purposes of this section. The members of the second injury fund commission shall receive no compensation in addition to their salary as governor, attorney general, or members of the general assembly, but may receive their necessary expenses while attending the meetings of the commission, to be paid out of the second injury fund.

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

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

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