

FIRST REGULAR SESSION

# SENATE BILL NO. 1

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Pre-filed December 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0225S.011

## AN ACT

To repeal sections 287.210, 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof five new sections relating to workers' compensation, with an emergency clause for certain sections.

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

Section A. Sections 287.210, 287.220, 287.690, and 287.715, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections  
3 287.165, 287.210, 287.220, 287.690, and 287.715, to read as follows:

**287.165. Unless otherwise provided for under this chapter,  
2 interest for the purpose of this chapter shall be set at the adjusted rate  
3 of interest established by the director of revenue pursuant to section  
4 32.065.**

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

12 2. The commission, the division or administrative law judge shall, when  
13 deemed necessary, appoint a duly qualified impartial physician to examine the

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

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

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

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

43           5. As used in this chapter the terms "physician's report" and "medical  
44 report" mean the report of any physician made on any printed form authorized  
45 by the division or the commission or any complete medical report. As used in this  
46 chapter the term "complete medical report" means the report of a physician giving  
47 the physician's qualifications and the patient's history, complaints, details of the  
48 findings of any and all laboratory, X-ray and all other technical examinations,  
49 diagnosis, prognosis, nature of disability, if any, and an estimate of the

50 percentage of permanent partial disability, if any. An element or elements of a  
51 complete medical report may be met by the physician's records.

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

58           7. The testimony of a treating or examining physician may be submitted  
59 in evidence on the issues in controversy by a complete medical report and shall  
60 be admissible without other foundational evidence subject to compliance with the  
61 following procedures. The party intending to submit a complete medical report  
62 in evidence shall give notice at least sixty days prior to the hearing to all parties  
63 and shall provide reasonable opportunity to all parties to obtain  
64 cross-examination testimony of the physician by deposition. The notice shall  
65 include a copy of the report and all the clinical and treatment records of the  
66 physician including copies of all records and reports received by the physician  
67 from other health care providers. The party offering the report must make the  
68 physician available for cross-examination testimony by deposition not later than  
69 seven days before the matter is set for hearing, and each cross-examiner shall  
70 compensate the physician for the portion of testimony obtained in an amount not  
71 to exceed a rate of reasonable compensation taking into consideration the  
72 specialty practiced by the physician. Cross-examination testimony shall not bind  
73 the cross-examining party. Any testimony obtained by the offering party shall be  
74 at that party's expense on a proportional basis, including the deposition fee of the  
75 physician. Upon request of any party, the party offering a complete medical  
76 report in evidence must also make available copies of X rays or other diagnostic  
77 studies obtained by or relied upon by the physician. Within ten days after receipt  
78 of such notice a party shall dispute whether a report meets the requirements of  
79 a complete medical report by providing written objections to the offering party  
80 stating the grounds for the dispute, and at the request of any party, the  
81 administrative law judge shall rule upon such objections upon pretrial hearing  
82 whether the report meets the requirements of a complete medical report and upon  
83 the admissibility of the report or portions thereof. If no objections are filed the  
84 report is admissible, and any objections thereto are deemed waived. Nothing  
85 herein shall prevent the parties from agreeing to admit medical reports or records

86 by consent. [The provisions of this subsection shall not apply to claims against  
87 the second injury fund.]

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

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

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

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

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

62 fund which shall be deposited the same as are state funds and any interest  
63 accruing thereon shall be added thereto. The fund shall be subject to audit the  
64 same as state funds and accounts and shall be protected by the general bond  
65 given by the state treasurer. Upon the requisition of the director of the division  
66 of workers' compensation, warrants on the state treasurer for the payment of all  
67 amounts payable for compensation and benefits out of the second injury fund  
68 shall be issued.

69 **2.] the second injury fund.**

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

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

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

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

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

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

94 **(3) Compensation for benefits payable under this subsection shall**  
95 **be based on the employee's compensation rate calculated under section**  
96 **287.250.**

97 **4. In all cases in which a recovery against the second injury fund is**  
98 **sought for permanent partial disability, permanent total disability, or death, the**

99 state treasurer as custodian thereof shall be named as a party, and shall be  
100 entitled to defend against the claim.

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

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

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

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

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

125 (4) **For all claims filed against the second injury fund on or after July 1,**  
126 **1994, the attorney general shall use assistant attorneys general except in**  
127 **circumstances where an actual or potential conflict of interest exists, to provide**  
128 **legal services as may be required in all claims made for recovery against the**  
129 **fund. Any legal expenses incurred by the attorney general's office in the handling**  
130 **of such claims, including, but not limited to, medical examination fees incurred**  
131 **under sections 287.210 and the expenses provided for under section**  
132 **287.140, expert witness fees, court reporter expenses, travel costs, and related**  
133 **legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of**  
134 **such legal expenses shall be contingent upon annual appropriations made by the**

135 general assembly, from the fund, to the attorney general's office for this specific  
136 purpose.

137 [3.] 5. If more than one injury in the same employment causes concurrent  
138 temporary disabilities, compensation shall be payable only for the longest and  
139 largest paying disability.

140 [4.] 6. If more than one injury in the same employment causes concurrent  
141 and consecutive permanent partial disability, compensation payments for each  
142 subsequent disability shall not begin until the end of the compensation period of  
143 the prior disability.

144 [5.] 7. If an employer fails to insure or self-insure as required in section  
145 287.280, funds from the second injury fund may be withdrawn to cover the fair,  
146 reasonable, and necessary expenses **incurred relating to claims for injuries**  
147 **occurring prior to the effective date of this section**, to cure and relieve the  
148 effects of the injury or disability of an injured employee in the employ of an  
149 uninsured employer **consistent with subsection 3 of section 287.140**, or in  
150 the case of death of an employee in the employ of an uninsured employer, funds  
151 from the second injury fund may be withdrawn to cover fair, reasonable, and  
152 necessary expenses **incurred relating to a death occurring prior to the**  
153 **effective date of this section**, in the manner required in sections 287.240 and  
154 287.241. In defense of claims arising under this subsection, the treasurer of the  
155 state of Missouri, as custodian of the second injury fund, shall have the same  
156 defenses to such claims as would the uninsured employer. Any funds received by  
157 the employee or the employee's dependents, through civil or other action, must  
158 go towards reimbursement of the second injury fund, for all payments made to the  
159 employee, the employee's dependents, or paid on the employee's behalf, from the  
160 second injury fund pursuant to this subsection. The office of the attorney general  
161 of the state of Missouri shall bring suit in the circuit court of the county in which  
162 the accident occurred against any employer not covered by this chapter as  
163 required in section 287.280.

164 [6.] 8. Every [three years] **year** the second injury fund shall have an  
165 actuarial study made to determine the solvency of the fund **taking into**  
166 **consideration any existing balance carried forward from a previous**  
167 **year**, appropriate funding level of the fund, and forecasted expenditures from the  
168 fund. The first actuarial study shall be completed prior to July 1, [1988]  
169 **2014**. The expenses of such actuarial studies shall be paid out of the fund for the  
170 support of the division of workers' compensation.



171 [7.] 9. The director of the division of workers' compensation shall  
172 maintain the financial data and records concerning the fund for the support of the  
173 division of workers' compensation and the second injury fund. The division shall  
174 also compile and report data on claims made pursuant to subsection 9 of this  
175 section. The attorney general shall provide all necessary information to the  
176 division for this purpose.

177 [8.] 10. All claims for fees and expenses filed against the second injury  
178 fund and all records pertaining thereto shall be open to the public.

179 [9.] 11. Any employee who at the time a compensable work-related injury  
180 is sustained **prior to the effective date of this section** is employed by more  
181 than one employer, the employer for whom the employee was working when the  
182 injury was sustained shall be responsible for wage loss benefits applicable only  
183 to the earnings in that employer's employment and the injured employee shall be  
184 entitled to file a claim against the second injury fund for any additional wage loss  
185 benefits attributed to loss of earnings from the employment or employments  
186 where the injury did not occur, up to the maximum weekly benefit less those  
187 benefits paid by the employer in whose employment the employee sustained the  
188 injury. The employee shall be entitled to a total benefit based on the total  
189 average weekly wage of such employee computed according to subsection 8 of  
190 section 287.250. The employee shall not be entitled to a greater rate of  
191 compensation than allowed by law on the date of the injury. The employer for  
192 whom the employee was working where the injury was sustained shall be  
193 responsible for all medical costs incurred in regard to that injury.

194 **12. No compensation shall be payable from the second injury**  
195 **fund if the employee elects to pursue compensation under the workers'**  
196 **compensation law of another state with jurisdiction over the employee's**  
197 **injury or accident or occupational disease.**

198 **13. Notwithstanding the requirements of section 287.470, the life**  
199 **payments to an injured employee made from the fund shall be**  
200 **suspended when the employee is able to obtain suitable gainful**  
201 **employment or be self-employed in view of the nature and severity of**  
202 **the injury. The division shall promulgate rules setting forth a**  
203 **reasonable standard means test to determine if such employment**  
204 **warrants the suspension of benefits.**

205 **14. Notwithstanding the requirements of section 287.470, the**  
206 **director may suspend, in whole or in part, the life payments to an**

207 injured employee made from the fund when the employee becomes  
208 eligible to receive Social Security benefits. In no case shall the sum of  
209 the amount of monthly payments from the fund and the monthly Social  
210 Security benefits attributable to the employee's injury, be less than the  
211 monthly life payments from the fund the employee has been receiving.

212 **15. All awards issued under this chapter affecting the second**  
213 **injury fund shall be subject to the provisions of this chapter governing**  
214 **review and appeal.**

215 **16. The division shall pay any liabilities of the fund in the**  
216 **following priority:**

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

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

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

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

225 **(5) Interest on unpaid awards.**

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

287.690. [1.] Prior to December 31, 1993, for the purpose of providing for  
2 the expense of administering this chapter [and for the purpose set out in  
3 subsection 2 of this section], every person, partnership, association, corporation,  
4 whether organized under the laws of this or any other state or country, the state  
5 of Missouri, including any of its departments, divisions, agencies, commissions,  
6 and boards or any political subdivisions of the state who self-insure or hold  
7 themselves out to be any part self-insured, company, mutual company, the parties  
8 to any interindemnity contract, or other plan or scheme, and every other  
9 insurance carrier, insuring employers in this state against liability for personal  
10 injuries to their employees, or for death caused thereby, under this chapter, shall  
11 pay, as provided in this chapter, tax upon the net deposits, net premiums or net  
12 assessments received, whether in cash or notes in this state, or on account of  
13 business done in this state, for such insurance in this state at the rate of two  
14 percent in lieu of all [other] **premium** taxes on such net deposits, net premiums

15 or net assessments, which amount of taxes shall be assessed and collected as  
16 herein provided. Beginning October 31, 1993, and every year thereafter, the  
17 director of the division of workers' compensation shall estimate the amount of  
18 revenue required to administer this chapter and the **division** director shall  
19 determine the rate of tax to be paid in the following calendar year pursuant to  
20 this section commencing with the calendar year beginning on January 1, 1994. If  
21 the balance of the fund [estimated to be] on hand on [December thirty-first] **July**  
22 **first** of the year each tax rate determination is made **on October thirty-first**  
23 is less than one hundred ten percent of the previous year's expenses plus any  
24 additional revenue required due to new statutory requirements given to the  
25 division by the general assembly, then the **division** director shall impose a tax  
26 not to exceed two percent in lieu of all other taxes on net deposits, net premiums  
27 or net assessments, rounded up to the nearest one-half of a percentage point,  
28 which amount of taxes shall be assessed and collected as herein provided. The  
29 net premium equivalent for individual self-insured employers and any group of  
30 political subdivisions of this state qualified to self-insure their liability pursuant  
31 to this chapter as authorized by section 537.620 shall be based on average rate  
32 classifications calculated by the department of insurance, financial institutions  
33 and professional registration as taken from premium rates filed by the twenty  
34 insurance companies providing the greatest volume of workers' compensation  
35 insurance coverage in this state. For employers qualified to self-insure their  
36 liability pursuant to this chapter, the rates filed by such group of employers in  
37 accordance with subsection 2 of section 287.280 shall be the net premium  
38 equivalent. Every entity required to pay the tax imposed pursuant to this section  
39 and section 287.730 shall be notified by the division of workers' compensation  
40 within ten calendar days of the date of the determination of the rate of tax to be  
41 imposed for the following year. Net premiums, net deposits or net assessments  
42 are defined as gross premiums, gross deposits or gross assessments less canceled  
43 or returned premiums, premium deposits or assessments and less dividends or  
44 savings, actually paid or credited.

45 [2. After January 1, 1994, the director of the division shall make one or  
46 more loans to the Missouri employers mutual insurance company in an amount  
47 not to exceed an aggregate amount of five million dollars from the fund  
48 maintained to administer this chapter for start-up funding and initial  
49 capitalization of the company. The board of the company shall make application  
50 to the director for the loans, stating the amount to be loaned to the company. The

51 loans shall be for a term of five years and, at the time the application for such  
52 loans is approved by the director, shall bear interest at the annual rate based on  
53 the rate for linked deposit loans as calculated by the state treasurer pursuant to  
54 section 30.758.]

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

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

33 537.620 shall be based on average rate classifications calculated by the  
34 department of insurance, financial institutions and professional registration as  
35 taken from premium rates filed by the twenty insurance companies providing the  
36 greatest volume of workers' compensation insurance coverage in this state. For  
37 employers qualified to self-insure their liability pursuant to this chapter, the  
38 rates filed by such group of employers in accordance with subsection 2 of section  
39 287.280 shall be the net premium equivalent. The director may advance funds  
40 from the workers' compensation fund to the second injury fund if surcharge  
41 collections prove to be insufficient. Any funds advanced from the workers'  
42 compensation fund to the second injury fund must be reimbursed by the second  
43 injury fund no later than December thirty-first of the year following the  
44 advance. The surcharge shall be collected from policyholders by each insurer at  
45 the same time and in the same manner that the premium is collected, but no  
46 insurer or its agent shall be entitled to any portion of the surcharge as a fee or  
47 commission for its collection. The surcharge is not subject to any taxes, licenses  
48 or fees.

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

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

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

66       **6. In order to maintain the fiscal solvency of the second injury**  
67 **fund, should the anticipated collections authorized in subsection 2 of**  
68 **this section fail to be sufficient to meet its current and anticipated**

69 legal obligations, provide funds to settle cases, and provide funds for  
70 the administration of the fund for calendar years 2014, 2015, 2016, 2017,  
71 2018, 2019, and 2020, the director of the division of workers'  
72 compensation, shall determine the amount of revenue so  
73 required. Notwithstanding subsection 2 of this section to the contrary,  
74 such necessary funds as determined by the director of the division of  
75 workers' compensation shall be collected with a supplemental  
76 surcharge, not to exceed one and one-half percent, calculated in like  
77 manner as authorized in subsection 2 of this section. All policyholders  
78 and self-insurers shall be notified by the division of workers'  
79 compensation of the supplemental surcharge percent to be imposed for  
80 such period of time as part of the notice provided in subsection 2 of  
81 this section. The provisions of this subsection shall expire on  
82 December 31, 2020.

83         7. In order to maintain the fiscal solvency of the second injury  
84 fund, should the anticipated collections authorized in subsections 2 and  
85 6 of this section fail to be sufficient to meet its current and anticipated  
86 legal obligations, provide funds to settle cases, and provide funds for  
87 the administration of the fund for calendar years 2015, 2016, 2017, 2018,  
88 2019, and 2020, the second injury fund commission shall determine on  
89 or before October thirty-first the amount of revenue so required for the  
90 following calendar year. Notwithstanding subsection 2 of this section  
91 to the contrary, such necessary funds as determined by the second  
92 injury fund commission shall be collected with a supplemental  
93 surcharge, not to exceed one and one-half percent, calculated in like  
94 manner as authorized in subsection 2 of this section. All policyholders  
95 and self-insurers shall be notified by the division of workers'  
96 compensation of the supplemental surcharge percent to be imposed for  
97 such period of time as part of the notice provided in subsection 2 of  
98 this section. The provisions of this subsection shall expire on  
99 December 31, 2020.

100         8. Once the number of pending cases is reduced to the point  
101 where the number of staff with the attorney general's office defending  
102 the second injury fund can be reduced from July 2013 levels, the  
103 attorney general shall begin reducing such staff in proportion to the  
104 number of pending cases which remain.

105         9. Funds collected under the provisions of this chapter shall be

106 the sole funding source of the second injury fund.

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

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

✓