FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1
97TH GENERAL ASSEMBLY
2013

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

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

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repealed and fourteen new sections enacted in lieu thereof, to be known as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

287.020. 1. The word "employee" as used in this chapter shall be
construed to mean every person in the service of any employer, as defined in this
chapter, under any contract of hire, express or implied, oral or written, or under
any appointment or election, including executive officers of corporations. Except
as otherwise provided in section 287.200, any reference to any employee who has
been injured shall, when the employee is dead, also include his dependents, and
other persons to whom compensation may be payable. The word "employee" shall
also include all minors who work for an employer, whether or not such minors are
employed in violation of law, and all such minors are hereby made of full age for
all purposes under, in connection with, or arising out of this chapter. The word

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is
intended to be omitted in the law.
"employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. **The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.**

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

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident 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.

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

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

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

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

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

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

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

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

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

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

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

9. For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section
83 287.250 shall control.
84 10. In applying the provisions of this chapter, it is the intent of the
85 legislature to reject and abrogate earlier case law interpretations on the meaning
86 of or definition of "accident", "occupational disease", "arising out of", and "in the
87 course of the employment" to include, but not be limited to, holdings in: Bennett
88 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);
89 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,
90 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
91 following those cases.
92
93 11. For the purposes of this chapter, "occupational diseases due
to toxic exposure" shall only include the following: mesothelioma,
asbestosis, berylliosis, coal worker's pneumoconiosis, brochiolitis
obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous
leukemia, and myelodysplastic syndrome.
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95 287.067. 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.
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97 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
degeneration of the body caused by aging or by the normal activities of day-to-day
living shall not be compensable.
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99 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
23 deterioration, or progressive degeneration of the body caused by aging or by the
24 normal activities of day-to-day living shall not be compensable.

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

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

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

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

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

287.120. 1. Every employer subject to the provisions of this chapter shall
2 be liable, irrespective of negligence, to furnish compensation under the provisions
3 of this chapter for personal injury or death of the employee by accident or
4 occupational disease arising out of and in the course of the employee's
5 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 non-prescribed 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 non-prescribed controlled drugs.

(2) If, however, the use of alcohol or non-prescribed 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. 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 first notice of dispute of the medical charge was received by the health care provider if such services were rendered before July 1, 2013; and

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

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.

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

2. When a third person is liable for the death of an employee and
compensation is paid or payable under this chapter, and recovery is had by a
dependent under this chapter either by judgment or settlement for the wrongful
death of the employee, the employer shall have a subrogation lien on any recovery
and shall receive or have credit for sums paid or payable under this chapter to
any of the dependents of the deceased employee to the extent of the settlement
or recovery by such dependents for the wrongful death. Recovery by the employer
and credit for future installments shall be computed using the provisions of
subsection 3 of this section relating to comparative fault of the employee.

3. Whenever recovery against the third person is effected by the employee
or his dependents, the employer shall pay from his share of the recovery a
proportionate share of the expenses of the recovery, including a reasonable
attorney fee. After the expenses and attorney fee have been paid, the balance of
the recovery shall be apportioned between the employer and the employee or his
dependents in the same ratio that the amount due the employer bears to the total
amount recovered if there is no finding of comparative fault on the part of the
employee, or the total damages determined by the trier of fact if there is a finding
of comparative fault on the part of the employee. Notwithstanding the foregoing
provision, the balance of the recovery may be divided between the employer and
the employee or his dependents as they may otherwise agree. Any part of the
recovery found to be due to the employer, the employee or his dependents shall
be paid forthwith and any part of the recovery paid to the employee or his
dependents under this section shall be treated by them as an advance payment
by the employer on account of any future installments of compensation in the
following manner:

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

(2) A percentage of the amount paid to the employee or his dependents
equal to the percentage of fault assessed to the third person from whom recovery
is made shall be treated as an advance payment if there is a finding of
comparative fault on the part of the employee.

4. In any case in which an injured employee has been paid benefits from
the second injury fund as provided in subsection 3 of section 287.141, and
recovery is had against the third party liable to the employee for the injury, the
second injury fund shall be subrogated to the rights of the employee against said
third party to the extent of the payments made to him from such fund, subject to
provisions of subsections 2 and 3 of this section.
5. No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

6. Any provision in any contract or subcontract, where one party is an employer in the construction group of code classifications, which purports to waive subrogation rights provided under this section in anticipation of a future injury or death is hereby declared against public policy and void. Each contract of insurance for workers' compensation shall require the insurer to diligently pursue all subrogation rights of the employer and shall require the employer to fully cooperate with the insurer in pursuing such recoveries, except that the employer may enter into compromise agreements with an insurer in lieu of the insurer pursuing subrogation against another party. The amount of any subrogation recovery by an insurer shall be credited against the amount of the actual paid losses in the determination of such employer's experience modification factor within forty-five days of the collection of such amount.

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

287.200. 1. Compensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the
injury for which compensation is being made. The word "employee" as used in
this section shall not include the injured worker's dependents, estate, or other
persons to whom compensation may be payable as provided in subsection 1 of
section 287.020. The amount of such compensation shall be computed as follows:

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

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

3. For all injuries occurring on or after August 28, 1990, but before
   August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
   and two-thirds percent of the injured employee's average weekly earnings as of
   the date of the injury; provided that the weekly compensation paid under this
   subdivision shall not exceed an amount equal to one hundred percent of the state
   average weekly wage;

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

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

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

3. All claims for permanent total disability shall be determined in accordance with the facts. When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his regular work or its equivalent. The employer and the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability. In any case where the life payment is suspended under this subsection, the commission may at reasonable times review the case and either the employee or the employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

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

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

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

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

      (a) For employers that have elected to accept mesothelioma liability under this subsection, an additional amount of three hundred percent of the state's average weekly wage for two hundred twelve weeks shall be paid by the employer or group of employers such
employer is a member of. Employers that elect to accept mesothelioma liability under this subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by becoming a member of a group insurance pool. A group of employers may enter into an agreement to pool their liabilities under this subsection. If such group is joined, individual members shall not be required to qualify as individual self-insurers. Such group shall comply with section 287.223. In order for an employer to make such an election, the employer shall provide the department with notice of such an election in a manner established by the department. The provisions of this paragraph shall expire on December 31, 2038; or

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

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

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

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

5. Any employee who obtains benefits under subdivision (2) of subsection 4 of this section for acquiring asbestosis who later obtains an award for mesothelioma, shall not receive more benefits than such employee would receive having only obtained benefits for mesothelioma
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 cases of permanent disability where there has been previous disability due to injuries occurring prior to the effective date of this section shall be compensated as [herein] provided in this subsection. 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 and all claims against
the second injury fund involving a subsequent compensable injury
which is an occupational disease filed 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 the
following conditions are met:

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

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

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

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

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

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

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

(3) 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 compromise settlements as contemplated by section 287.390, or agreed statements of fact that would affect the second injury
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.

(2) 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] 11 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 files a claim for 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.

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

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

2. Unless otherwise clearly indicated by the context, the following words and terms as used in this section mean:
   (1) "Board", the board of trustees of the Missouri mesothelioma risk management fund;
   (2) "Fund", the Missouri mesothelioma risk management fund established by subsection 1 of this section.

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

4. Employers who participate in the fund shall make annual contributions to the fund in the amount determined by the board in accordance with this section relating to rates established by insurers. Participation in the fund has the same effect as purchase of insurance by such employer, as otherwise provided by law, and shall have the same effect as a self-insurance plan. Moneys in the fund shall be available for:
   (1) The payment and settlement of all claims for which coverage has been obtained by any employer participating in the fund in accordance with coverages offered by the board relating to mesothelioma awards pursuant to paragraph (a) of subdivision (3) of subsection 4 of section 287.200;
   (2) Attorney's fees and expenses incurred in the administration and representation of the fund.

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

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

7. All staff for the fund shall be provided by the department of
labor except as otherwise specifically determined by the board. The
fund shall reimburse the department of labor for all costs of providing
staff required by this subsection. Such reimbursement shall be made
on an annual basis, pursuant to contract negotiated between the fund
and the department of labor. The fund is a body corporate and politic,
and the state of Missouri shall not be liable in any way with respect to
claims made against the fund or against member employers covered by
the fund, nor with respect to any expense of operation of the
fund. Money in the fund is not state money nor is it money collected or
received by the state.

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

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

10. There is hereby established a "Board of Trustees of the
Missouri Mesothelioma Risk Management Fund" which shall consist of
the director of the department of labor, and four members, appointed
by the governor with the advice and consent of the senate, who are
officers or employees of those employers participating in the fund. No
more than two members appointed by the governor shall be of the same
political party. The members appointed by the governor shall serve
four-year terms, except that the original appointees shall be appointed
for the following terms: one for one year, one for two years, one for
three years, and one for four years. Any vacancies occurring on the
board shall be filled in the same manner. In appointing the initial
board of trustees the governor may anticipate which public entities will participate in the fund, and the appointees may serve the terms designated herein, unless they sooner resign or are removed in accordance with law.

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

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

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

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

15. The board shall meet in Jefferson City, Missouri, upon the written call of the chairman or by the agreement of any three members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent.

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

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

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

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

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

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

22. The board shall determine and prescribe all rules,
regulations, coverages to be offered, forms and rates to carry out the
purposes of this section.

23. The board shall have exclusive jurisdiction and control over
the funds and property of the fund.

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

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

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

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

28. The board shall set up and maintain a Missouri mesothelioma
risk management fund account in which shall be placed all
contributions, premiums, and income from all sources. All property,
money, funds, investments, and rights which shall belong to, or be
available for expenditure or use by, the fund shall be dedicated to and
held in trust for the purposes set out in this section and no other. The
board shall have power, in the name of and on behalf of the fund, to
purchase, acquire, hold, invest, lend, lease, sell, assign, transfer, and
dispose of all property, rights, and securities, and enter into written contracts, all as may be necessary or proper to carry out the purposes of this section.

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

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

31. If contributions to the fund do not produce sufficient funds to pay any claims which may be due, the board shall assess and each member, including any member who has withdrawn but was a member in the year in which the assessment is required, shall pay such additional amounts which are each member's proportionate share of total claims allowed and due. The provisions of this subsection shall apply retroactively to the creation of the Missouri mesothelioma risk management fund.

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

33. Nothing in this section, shall be construed to broaden or restrict the liability of the member employers participating in the fund beyond the provisions of this sections, nor to abolish or waive any defense at law which might otherwise be available to any employer
34. If, at the end of any fiscal year, the fund has a balance exceeding projected needs, and adequate reserves, the board may in its discretion refund on a pro rata basis to all participating employer members an amount based on the contributions of the public entity for the immediately preceding year.

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure [his] their entire liability [thereunder] under the workers' compensation law; and may insure in whole or in part their employer liability, under a policy of insurance or a self-insurance plan, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability [so to do] to do so. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his dependents may elect after the injury either to bring an action against such employer or group of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of the employee; or to recover under this chapter with the compensation payments commuted and immediately payable; or, if the employee elects to do so, he or she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 5 of section 287.220. If the employer or group of employers are carrying their own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the employer or group of employers to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their
liability hereunder to the extent of the equivalent of the maximum liability under
this chapter for ten deaths in any one accident, but the employer or group of
employers may carry their own risk for any excess liability. When a group of
employers enter into an agreement to pool their liabilities under this chapter,
individual members will not be required to qualify as individual self-insurers.

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

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

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

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

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

7. Any records submitted pursuant to this section, and pursuant to any rule promulgated by the division pursuant to this section, shall be considered confidential and not subject to chapter 610. Any party to a workers' compensation case involving the party that submitted the records shall be able to subpoena the records for use in a workers' compensation case, if the information is otherwise relevant.

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

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

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

[4.] 3. The administrative law judge review committee members shall not have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. All members of the committee shall have a working knowledge of workers' compensation.
4. The committee shall within thirty days of completing each performance audit make a recommendation of confidence or no confidence for each administrative law judge.

5. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

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

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

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

(2) The review committee shall consist of the division director, who shall be appointed by the governor, one member appointed by the president pro tem of the senate, one member appointed by the minority leader of the senate, one member appointed by the speaker of the house of representatives, and one member appointed by the minority leader of the house of representatives. The governor shall appoint to the committee one member selected from the commission on retirement, removal, and discipline of judges. This member shall act as a member ex-officio and shall not have a vote in the committee. The division director shall serve as the chairperson of the committee, and shall serve on the committee during the time of employment in such position. The committee shall annually elect a chairperson from its members for a term of one year. The term of service for all members shall be two years. The review committee members shall all serve without compensation. Necessary expenses for review committee members and all necessary support services to the review committee shall be provided by the division.

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

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. Notwithstanding subsection 2 of this section to the contrary, the director of the division of workers' compensation shall collect a supplemental surcharge not to exceed three percent for calendar years 2014 to 2021 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. All policyholders and self-insurers shall be notified by the division of the supplemental surcharge percentage 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, 2021.

7. Funds collected under the provisions of this chapter shall be
the sole funding source 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.

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

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

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

[3.] 4. The designated advisory organization shall develop and file manual rules, subject to the approval of the director, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.
5. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business. No insurer shall agree with any other insurer or with the advisory organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system of the uniform statistical plan.

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

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

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

   (3) Premium modifications under this subsection may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly-situated employers.
(a) Premium modifications resulting from a schedule rating plan, with an underwriter determining individual risk characteristics, shall be limited to plus or minus twenty-five percent. An additional ten percent credit may be given for a reduction in the insurer's expenses.

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

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

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