SECOND REGULAR SESSION

SENATE BILL NO. 1089

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time March 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6799S.01I

AN ACT

To repeal section 287.280, RSMo, and to enact in lieu thereof one new section relating to the use of a third-party administrator in the course of certain workers' compensation proceedings.

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

Section A. Section 287.280, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.280, to read as follows:

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure their entire liability 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 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 or her 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

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

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 7 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. When considering applications for new trust self-insurers, as described under 8 CSR 50-3.010, the division shall require proof of payment by each member of not less than twenty-five percent of the estimated annual premium; except that, for new members who wish to join an existing trust self-insurer during the policy year rather than at the beginning of the policy year, the division shall require proof of payment of the lesser of the estimated premium of three months or the estimated premium for the balance of the policy year.

6. Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus moneys from a prior trust year not needed for current obligations. Notwithstanding any provision of law to the contrary, upon approval by the division, a self-insured trust may invest up to one hundred percent of surplus moneys in securities designated by the state treasurer as acceptable collateral to secure state deposits under section 30.270.

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

8. **If a group of employers who have been granted self-insurance authority under this chapter or chapter 537 or a public sector individual employer granted self-insurance authority under this chapter is deemed insolvent, determined to be insolvent, or files for bankruptcy, and fails to pay any of its obligations that are owed to an injured employee or such employee's dependents under this chapter, whether based upon a compromise settlement approved under section 287.390 or based upon an award issued under this chapter, the division shall call upon the entire security posted by the group of employers or public sector individual employer. The division may refer all known losses or cases of the group of employers or public sector individual employer to a third-party administrator or any such entity authorized in the state of Missouri to administer the workers' compensation**

cases. The third-party administrator or entity to which the losses are transferred shall have the authority to receive the security proceeds from the division and use the proceeds after deducting reasonable administrative expenses, to pay the compensation benefits owed under this chapter. The security proceeds shall not be considered state property and shall not be subject to appropriation by the general assembly, the treasurer, or any other state department or agency. Any unused portion of the security proceeds shall be returned to the division. The group of employers or public sector individual employer may apply to the division for release of the unused portion of the security proceeds as set forth in the rules promulgated by the division pursuant to this section. Neither the division nor any third-party administrator shall be obligated or required to pay any obligations or moneys in an amount in excess of the security proceeds, and neither the division nor any third-party administrator shall be liable for any interest or penalties. The joint and several liability of the members of a group that is deemed insolvent, determined to be insolvent, or that files for bankruptcy shall continue and shall not be terminated by payment of benefits under this subsection.

9. 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.

[9.**]** **10.** 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.