

FIRST REGULAR SESSION

SENATE BILL NO. 156

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Pre-filed December 5, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0786S.01I

AN ACT

To repeal sections 287.220 and 287.280, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation.

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

Section A. Sections 287.220 and 287.280, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.220 and 287.280, to read as follows:

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 January 1, 2014, shall be compensated as 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

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

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

55 3. (1) All claims against the second injury fund for injuries occurring after

56 January 1, 2014, and all claims against the second injury fund involving a
57 subsequent compensable injury which is an occupational disease filed after
58 January 1, 2014, shall be compensated as provided in this subsection.

59 (2) No claims for permanent partial disability occurring after January 1,
60 2014, shall be filed against the second injury fund. Claims for permanent total
61 disability under section 287.200 against the second injury fund shall be
62 compensable only when the following conditions are met:

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

67 (i) A direct result of active military duty in any branch of the United
68 States Armed Forces; or

69 (ii) A direct result of a compensable injury as defined in section 287.020;
70 or

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

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

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

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

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

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

95 4. (1) In all cases in which a recovery against the second injury fund is
96 sought for permanent partial disability, permanent total disability, or death, the
97 state treasurer as custodian thereof shall be named as a party, and shall be
98 entitled to defend against the claim.

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

105 (3) For all claims filed against the second injury fund on or after July 1,
106 1994, the attorney general shall use assistant attorneys general except in
107 circumstances where an actual or potential conflict of interest exists, to provide
108 legal services as may be required in all claims made for recovery against the
109 fund. Any legal expenses incurred by the attorney general's office in the handling
110 of such claims, including, but not limited to, medical examination fees incurred
111 under sections 287.210 and the expenses provided for under section 287.140,
112 expert witness fees, court reporter expenses, travel costs, and related legal
113 expenses shall be paid by the fund. Effective July 1, 1993, the payment of such
114 legal expenses shall be contingent upon annual appropriations made by the
115 general assembly, from the fund, to the attorney general's office for this specific
116 purpose.

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

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

124 7. If an employer fails to insure or self-insure as required in section
125 287.280, funds from the second injury fund may be withdrawn to cover the fair,
126 reasonable, and necessary expenses incurred relating to claims for injuries
127 occurring prior to January 1, 2014, to cure and relieve the effects of the injury or
128 disability of an injured employee in the employ of an uninsured employer
129 consistent with subsection 3 of section 287.140, or in the case of death of an

130 employee in the employ of an uninsured employer, funds from the second injury
131 fund may be withdrawn to cover fair, reasonable, and necessary expenses incurred
132 relating to a death occurring prior to January 1, 2014, in the manner required in
133 sections 287.240 and 287.241. In defense of claims arising under this subsection,
134 the treasurer of the state of Missouri, as custodian of the second injury fund,
135 shall have the same defenses to such claims as would the uninsured
136 employer. Any funds received by the employee or the employee's dependents,
137 through civil or other action, must go towards reimbursement of the second injury
138 fund, for all payments made to the employee, the employee's dependents, or paid
139 on the employee's behalf, from the second injury fund pursuant to this
140 subsection. The office of the attorney general of the state of Missouri shall bring
141 suit in the circuit court of the county in which the accident occurred against any
142 employer not covered by this chapter as required in section 287.280.

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

149 9. The director of the division of workers' compensation shall maintain the
150 financial data and records concerning the fund for the support of the division of
151 workers' compensation and the second injury fund. The division shall also
152 compile and report data on claims made pursuant to subsection 11 of this
153 section. The attorney general shall provide all necessary information to the
154 division for this purpose.

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

157 11. Any employee who at the time a compensable work-related injury is
158 sustained prior to January 1, 2014, is employed by more than one employer, the
159 employer for whom the employee was working when the injury was sustained
160 shall be responsible for wage loss benefits applicable only to the earnings in that
161 employer's employment and the injured employee shall be entitled to file a claim
162 against the second injury fund for any additional wage loss benefits attributed to
163 loss of earnings from the employment or employments where the injury did not
164 occur, up to the maximum weekly benefit less those benefits paid by the employer
165 in whose employment the employee sustained the injury. The employee shall be
166 entitled to a total benefit based on the total average weekly wage of such

167 employee computed according to subsection 8 of section 287.250. The employee
168 shall not be entitled to a greater rate of compensation than allowed by law on the
169 date of the injury. The employer for whom the employee was working where the
170 injury was sustained shall be responsible for all medical costs incurred in regard
171 to that injury.

172 12. No compensation shall be payable from the second injury fund if the
173 employee files a claim for compensation under the workers' compensation law of
174 another state with jurisdiction over the employee's injury or accident or
175 occupational disease.

176 13. Notwithstanding the requirements of section 287.470, the life
177 payments to an injured employee made from the fund shall be suspended when
178 the employee is able to obtain suitable gainful employment or be self-employed
179 in view of the nature and severity of the injury. The division shall promulgate
180 rules setting forth a reasonable standard means test to determine if such
181 employment warrants the suspension of benefits.

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

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

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

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

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

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

194 (5) Interest on unpaid awards.

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

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

200 **17. Notwithstanding the provisions of subsection 15 of this section**
201 **to the contrary, the division may pay from the second injury fund any**
202 **of the following second injury fund liabilities prior to those liabilities**
203 **listed under subsection 15 of this section:**

204 **(1) All death benefits incurred under subsection 7 of this section**
205 **relating to claims for deaths occurring prior to January 1, 2014,**
206 **consistent with a temporary or final award; and**

207 **(2) Ongoing medical expenses, but not past medical expenses,**
208 **under subsection 7 of this section relating to claims for injuries**
209 **occurring prior to January 1, 2014, consistent with a temporary or final**
210 **award that includes future medical benefits.**

287.280. 1. Every employer subject to the provisions of this chapter shall,
2 on either an individual or group basis, insure their entire liability under the
3 workers' compensation law; and may insure in whole or in part their employer
4 liability, under a policy of insurance or a self-insurance plan, except as hereafter
5 provided, with some insurance carrier authorized to insure such liability in this
6 state, except that an employer or group of employers may themselves carry the
7 whole or any part of the liability without insurance upon satisfying the division
8 of their ability to do so. If an employer or group of employers have qualified to
9 self-insure their liability under this chapter, the division of workers' compensation
10 may, if it finds after a hearing that the employer or group of employers are
11 willfully and intentionally violating the provisions of this chapter with intent to
12 defraud their employees of their right to compensation, suspend or revoke the
13 right of the employer or group of employers to self-insure their liability. If the
14 employer or group of employers fail to comply with this section, an injured
15 employee or his or her dependents may elect after the injury either to bring an
16 action against such employer or group of employers to recover damages for
17 personal injury or death and it shall not be a defense that the injury or death was
18 caused by the negligence of a fellow servant, or that the employee had assumed
19 the risk of the injury or death, or that the injury or death was caused to any
20 degree by the negligence of the employee; or to recover under this chapter with
21 the compensation payments commuted and immediately payable; or, if the
22 employee elects to do so, he or she may file a request with the division for
23 payment to be made for medical expenses out of the second injury fund as
24 provided in subsection 7 of section 287.220. If the employer or group of employers
25 are carrying their own insurance, on the application of any person entitled to
26 compensation and on proof of default in the payment of any installment, the
27 division shall require the employer or group of employers to furnish security for
28 the payment of the compensation, and if not given, all other compensation shall
29 be commuted and become immediately payable; provided, that employers engaged
30 in the mining business shall be required to insure only their liability hereunder

31 to the extent of the equivalent of the maximum liability under this chapter for ten
32 deaths in any one accident, but the employer or group of employers may carry
33 their own risk for any excess liability. When a group of employers enter into an
34 agreement to pool their liabilities under this chapter, individual members will not
35 be required to qualify as individual self-insurers.

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

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

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

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

68 shall require proof of payment of the lesser of the estimated premium of three
69 months or the estimated premium for the balance of the policy year.

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

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

78 **8. If a group of employers who have been granted self-insurance**
79 **authority under this chapter or chapter 537 or a public sector individual**
80 **employer granted self-insurance authority under this chapter is deemed**
81 **insolvent, determined to be insolvent, or files for bankruptcy, and fails**
82 **to pay any of its obligations that are owed to an injured employee or**
83 **such employee's dependents under this chapter, whether based upon a**
84 **compromise settlement approved under section 287.390 or based upon an**
85 **award issued under this chapter, the division shall call upon the entire**
86 **security posted by the group of employers or public sector individual**
87 **employer. The division may refer all known losses or cases of the group**
88 **of employers or public sector individual employer to a third-party**
89 **administrator or any such entity authorized in the state of Missouri to**
90 **administer the workers' compensation cases. The third-party**
91 **administrator or entity to which the losses are transferred shall have the**
92 **authority to receive the security proceeds from the division and use the**
93 **proceeds after deducting reasonable administrative expenses, to pay the**
94 **compensation benefits owed under this chapter. The security proceeds**
95 **shall not be considered state property and shall not be subject to**
96 **appropriation by the general assembly, the treasurer, or any other state**
97 **department or agency. Any unused portion of the security proceeds**
98 **shall be returned to the division. The group of employers or public**
99 **sector individual employer may apply to the division for release of the**
100 **unused portion of the security proceeds as set forth in the rules**
101 **promulgated by the division pursuant to this section. Neither the**
102 **division nor any third-party administrator shall be obligated or required**
103 **to pay any obligations or moneys in an amount in excess of the security**
104 **proceeds, and neither the division nor any third-party administrator**

105 shall be liable for any interest or penalties. The joint and several
106 liability of the members of a group that is deemed insolvent, determined
107 to be insolvent, or that files for bankruptcy shall continue and shall not
108 be terminated by payment of benefits under this subsection.

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

112 [9.] 10. Any records submitted pursuant to this section, and pursuant to
113 any rule promulgated by the division pursuant to this section, shall be considered
114 confidential and not subject to chapter 610. Any party to a workers' compensation
115 case involving the party that submitted the records shall be able to subpoena the
116 records for use in a workers' compensation case, if the information is otherwise
117 relevant.

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