

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 303**

101ST GENERAL ASSEMBLY  
2021

1430S.03T

---

---

**AN ACT**

To repeal sections 287.170, 287.180, 287.220, 287.280, 287.480, and 287.715, RSMo, and to enact in lieu thereof six new sections relating to workers' compensation.

---

---

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

Section A. Sections 287.170, 287.180, 287.220, 287.280,  
2 287.480, and 287.715, RSMo, are repealed and six new sections  
3 enacted in lieu thereof, to be known as sections 287.170,  
4 287.180, 287.220, 287.280, 287.480, and 287.715, to read as  
5 follows:

287.170. 1. For temporary total disability the  
2 employer shall pay compensation for not more than four  
3 hundred weeks during the continuance of such disability at  
4 the weekly rate of compensation in effect under this section  
5 on the date of the injury for which compensation is being  
6 made. The amount of such compensation shall be computed as  
7 follows:

8 (1) For all injuries occurring on or after September  
9 28, 1983, but before September 28, 1986, the weekly  
10 compensation shall be an amount equal to sixty-six and two-  
11 thirds percent of the injured employee's average weekly  
12 earnings as of the date of the injury; provided that the  
13 weekly compensation paid under this subdivision shall not

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

14 exceed an amount equal to seventy percent of the state  
15 average weekly wage, as such wage is determined by the  
16 division of employment security, as of the July first  
17 immediately preceding the date of injury;

18 (2) For all injuries occurring on or after September  
19 28, 1986, but before August 28, 1990, the weekly  
20 compensation shall be an amount equal to sixty-six and two-  
21 thirds percent of the injured employee's average weekly  
22 earnings as of the date of the injury; provided that the  
23 weekly compensation paid under this subdivision shall not  
24 exceed an amount equal to seventy-five percent of the state  
25 average weekly wage, as such wage is determined by the  
26 division of employment security, as of the July first  
27 immediately preceding the date of injury;

28 (3) For all injuries occurring on or after August 28,  
29 1990, but before August 28, 1991, the weekly compensation  
30 shall be an amount equal to sixty-six and two-thirds percent  
31 of the injured employee's average weekly earnings as of the  
32 date of the injury; provided that the weekly compensation  
33 paid under this subdivision shall not exceed an amount equal  
34 to one hundred percent of the state average weekly wage;

35 (4) For all injuries occurring on or after August 28,  
36 1991, the weekly compensation shall be an amount equal to  
37 sixty-six and two-thirds percent of the injured employee's  
38 average weekly earnings as of the date of the injury;  
39 provided that the weekly compensation paid under this  
40 subdivision shall not exceed an amount equal to one hundred  
41 five percent of the state average weekly wage;

42 (5) For all injuries occurring on or after September  
43 28, 1981, the weekly compensation shall in no event be less  
44 than forty dollars per week.

45           2. Temporary total disability payments shall be made  
46 to the claimant by check or other negotiable [instruments  
47 approved by the director which will not result in delay in  
48 payment] **instrument, or by electronic transfer or other**  
49 **manner authorized by the claimant,** and shall be forwarded  
50 directly to the claimant without intervention, or, when  
51 requested, to claimant's attorney if represented, except as  
52 provided in section 454.517, by any other party except by  
53 order of the division of workers' compensation.

54           3. An employee is disqualified from receiving  
55 temporary total disability during any period of time in  
56 which the claimant applies and receives unemployment  
57 compensation.

58           4. If the employee is terminated from post-injury  
59 employment based upon the employee's post-injury misconduct,  
60 neither temporary total disability nor temporary partial  
61 disability benefits under this section or section 287.180  
62 are payable. As used in this section, the phrase "post-  
63 injury misconduct" shall not include absence from the  
64 workplace due to an injury unless the employee is capable of  
65 working with restrictions, as certified by a physician.

66           5. If an employee voluntarily separates from  
67 employment with an employer at a time when the employer had  
68 work available for the employee that was in compliance with  
69 any medical restriction imposed upon the employee within a  
70 reasonable degree of medical certainty as a result of the  
71 injury that is the subject of a claim for benefits under  
72 this chapter, neither temporary total disability nor  
73 temporary partial disability benefits available under this  
74 section or section 287.180 shall be payable.

          287.180. 1. For temporary partial disability,  
2 compensation shall be paid during such disability but not

3 for more than one hundred weeks, and shall be sixty-six and  
4 two-thirds percent of the difference between the average  
5 earnings prior to the accident and the amount which the  
6 employee, in the exercise of reasonable diligence, will be  
7 able to earn during the disability, to be determined in view  
8 of the nature and extent of the injury and the ability of  
9 the employee to compete in an open labor market. The amount  
10 of such compensation shall be computed as follows:

11 (1) For all injuries occurring on or after September  
12 28, 1983, but before September 28, 1986, the weekly  
13 compensation shall be an amount equal to sixty-six and two-  
14 thirds percent of the injured employee's average weekly  
15 earnings as of the date of injury; provided that the weekly  
16 compensation paid under this subdivision shall not exceed an  
17 amount equal to seventy percent of the state average weekly  
18 wage, as such wages are determined by the division of  
19 employment security, as of the July first immediately  
20 preceding the date of injury;

21 (2) For all injuries occurring on or after September  
22 28, 1986, but before August 28, 1990, the weekly  
23 compensation shall be an amount equal to sixty-six and two-  
24 thirds percent of the injured employee's average weekly  
25 earnings as of the date of the injury; provided that the  
26 weekly compensation paid under this subdivision shall not  
27 exceed an amount equal to seventy-five percent of the state  
28 average weekly wage, as such wage is determined by the  
29 division of employment security, as of the July first  
30 immediately preceding the date of injury;

31 (3) For all injuries occurring on or after August 28,  
32 1990, but before August 28, 1991, the weekly compensation  
33 shall be an amount equal to sixty-six and two-thirds percent  
34 of the injured employee's average weekly earnings as of the

35 date of the injury; provided that the weekly compensation  
36 paid under this subdivision shall not exceed an amount equal  
37 to one hundred percent of the state average weekly wage;

38 (4) For all injuries occurring on or after August 28,  
39 1991, the weekly compensation shall be an amount equal to  
40 sixty-six and two-thirds percent of the injured employee's  
41 average weekly earnings as of the date of the injury;  
42 provided that the weekly compensation paid under this  
43 subdivision shall not exceed an amount equal to one hundred  
44 five percent of the state average weekly wage.

45 2. Temporary partial disability payments shall be made  
46 to the claimant by check, or other negotiable instrument  
47 [approved by the director which will not result in delay in  
48 payment], **or by electronic transfer or other manner**  
49 **authorized by the claimant.**

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

17           2. All cases of permanent disability where there has  
18 been previous disability due to injuries occurring prior to  
19 January 1, 2014, shall be compensated as provided in this  
20 subsection. Compensation shall be computed on the basis of  
21 the average earnings at the time of the last injury. If any  
22 employee who has a preexisting permanent partial disability  
23 whether from compensable injury or otherwise, of such  
24 seriousness as to constitute a hindrance or obstacle to  
25 employment or to obtaining reemployment if the employee  
26 becomes unemployed, and the preexisting permanent partial  
27 disability, if a body as a whole injury, equals a minimum of  
28 fifty weeks of compensation or, if a major extremity injury  
29 only, equals a minimum of fifteen percent permanent partial  
30 disability, according to the medical standards that are used  
31 in determining such compensation, receives a subsequent  
32 compensable injury resulting in additional permanent partial  
33 disability so that the degree or percentage of disability,  
34 in an amount equal to a minimum of fifty weeks compensation,  
35 if a body as a whole injury or, if a major extremity injury  
36 only, equals a minimum of fifteen percent permanent partial  
37 disability, caused by the combined disabilities is  
38 substantially greater than that which would have resulted  
39 from the last injury, considered alone and of itself, and if  
40 the employee is entitled to receive compensation on the  
41 basis of the combined disabilities, the employer at the time  
42 of the last injury shall be liable only for the degree or  
43 percentage of disability which would have resulted from the  
44 last injury had there been no preexisting disability. After  
45 the compensation liability of the employer for the last  
46 injury, considered alone, has been determined by an  
47 administrative law judge or the commission, the degree or  
48 percentage of employee's disability that is attributable to

49 all injuries or conditions existing at the time the last  
50 injury was sustained shall then be determined by that  
51 administrative law judge or by the commission and the degree  
52 or percentage of disability which existed prior to the last  
53 injury plus the disability resulting from the last injury,  
54 if any, considered alone, shall be deducted from the  
55 combined disability, and compensation for the balance, if  
56 any, shall be paid out of a special fund known as the second  
57 injury fund, hereinafter provided for. If the previous  
58 disability or disabilities, whether from compensable injury  
59 or otherwise, and the last injury together result in total  
60 and permanent disability, the minimum standards under this  
61 subsection for a body as a whole injury or a major extremity  
62 injury shall not apply and the employer at the time of the  
63 last injury shall be liable only for the disability  
64 resulting from the last injury considered alone and of  
65 itself; except that if the compensation for which the  
66 employer at the time of the last injury is liable is less  
67 than the compensation provided in this chapter for permanent  
68 total disability, then in addition to the compensation for  
69 which the employer is liable and after the completion of  
70 payment of the compensation by the employer, the employee  
71 shall be paid the remainder of the compensation that would  
72 be due for permanent total disability under section 287.200  
73 out of the second injury fund.

74 3. (1) All claims against the second injury fund for  
75 injuries occurring after January 1, 2014, and all claims  
76 against the second injury fund involving a subsequent  
77 compensable injury which is an occupational disease filed  
78 after January 1, 2014, shall be compensated as provided in  
79 this subsection.

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

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

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

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

94           (iii) Not a compensable injury, but such preexisting  
95 disability directly and significantly aggravates or  
96 accelerates the subsequent work-related injury and shall not  
97 include unrelated preexisting injuries or conditions that do  
98 not aggravate or accelerate the subsequent work-related  
99 injury; or

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

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

112 (b) An employee is employed in a sheltered workshop as  
113 established in sections 205.968 to 205.972 or sections  
114 178.900 to 178.960 and such employee thereafter sustains a  
115 compensable work-related injury that, when combined with the  
116 preexisting disability, results in a permanent total  
117 disability as defined under this chapter.

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

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

126 4. (1) In all cases in which a recovery against the  
127 second injury fund is sought for permanent partial  
128 disability, permanent total disability, or death, the state  
129 treasurer as custodian thereof shall be named as a party,  
130 and shall be entitled to defend against the claim.

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

139 (3) For all claims filed against the second injury  
140 fund on or after July 1, 1994, the attorney general shall  
141 use assistant attorneys general except in circumstances  
142 where an actual or potential conflict of interest exists, to  
143 provide legal services as may be required in all claims made

144 for recovery against the fund. Any legal expenses incurred  
145 by the attorney general's office in the handling of such  
146 claims, including, but not limited to, medical examination  
147 fees incurred under sections 287.210 and the expenses  
148 provided for under section 287.140, expert witness fees,  
149 court reporter expenses, travel costs, and related legal  
150 expenses shall be paid by the fund. Effective July 1, 1993,  
151 the payment of such legal expenses shall be contingent upon  
152 annual appropriations made by the general assembly, from the  
153 fund, to the attorney general's office for this specific  
154 purpose.

155         5. If more than one injury in the same employment  
156 causes concurrent temporary disabilities, compensation shall  
157 be payable only for the longest and largest paying  
158 disability.

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

164         7. If an employer fails to insure or self-insure as  
165 required in section 287.280, funds from the second injury  
166 fund may be withdrawn to cover the fair, reasonable, and  
167 necessary expenses incurred relating to claims for injuries  
168 occurring prior to January 1, 2014, to cure and relieve the  
169 effects of the injury or disability of an injured employee  
170 in the employ of an uninsured employer consistent with  
171 subsection 3 of section 287.140, or in the case of death of  
172 an employee in the employ of an uninsured employer, funds  
173 from the second injury fund may be withdrawn to cover fair,  
174 reasonable, and necessary expenses incurred relating to a  
175 death occurring prior to January 1, 2014, in the manner

176 required in sections 287.240 and 287.241. In defense of  
177 claims arising under this subsection, the treasurer of the  
178 state of Missouri, as custodian of the second injury fund,  
179 shall have the same defenses to such claims as would the  
180 uninsured employer. Any funds received by the employee or  
181 the employee's dependents, through civil or other action,  
182 must go towards reimbursement of the second injury fund, for  
183 all payments made to the employee, the employee's  
184 dependents, or paid on the employee's behalf, from the  
185 second injury fund pursuant to this subsection. The office  
186 of the attorney general of the state of Missouri shall bring  
187 suit in the circuit court of the county in which the  
188 accident occurred against any employer not covered by this  
189 chapter as required in section 287.280.

190       8. Every year the second injury fund shall have an  
191 actuarial study made to determine the solvency of the fund  
192 taking into consideration any existing balance carried  
193 forward from a previous year, appropriate funding level of  
194 the fund, and forecasted expenditures from the fund. The  
195 first actuarial study shall be completed prior to July 1,  
196 2014. The expenses of such actuarial studies shall be paid  
197 out of the fund for the support of the division of workers'  
198 compensation.

199       9. The director of the division of workers'  
200 compensation shall maintain the financial data and records  
201 concerning the fund for the support of the division of  
202 workers' compensation and the second injury fund. The  
203 division shall also compile and report data on claims made  
204 pursuant to subsection 11 of this section. The attorney  
205 general shall provide all necessary information to the  
206 division for this purpose.

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

210           11. Any employee who at the time a compensable work-  
211 related injury is sustained prior to January 1, 2014, is  
212 employed by more than one employer, the employer for whom  
213 the employee was working when the injury was sustained shall  
214 be responsible for wage loss benefits applicable only to the  
215 earnings in that employer's employment and the injured  
216 employee shall be entitled to file a claim against the  
217 second injury fund for any additional wage loss benefits  
218 attributed to loss of earnings from the employment or  
219 employments where the injury did not occur, up to the  
220 maximum weekly benefit less those benefits paid by the  
221 employer in whose employment the employee sustained the  
222 injury. The employee shall be entitled to a total benefit  
223 based on the total average weekly wage of such employee  
224 computed according to subsection 8 of section 287.250. The  
225 employee shall not be entitled to a greater rate of  
226 compensation than allowed by law on the date of the injury.  
227 The employer for whom the employee was working where the  
228 injury was sustained shall be responsible for all medical  
229 costs incurred in regard to that injury.

230           12. No compensation shall be payable from the second  
231 injury fund if the employee files a claim for compensation  
232 under the workers' compensation law of another state with  
233 jurisdiction over the employee's injury or accident or  
234 occupational disease.

235           13. Notwithstanding the requirements of section  
236 287.470, the life payments to an injured employee made from  
237 the fund shall be suspended when the employee is able to  
238 obtain suitable gainful employment or be self-employed in

239 view of the nature and severity of the injury. The division  
240 shall promulgate rules setting forth a reasonable standard  
241 means test to determine if such employment warrants the  
242 suspension of benefits.

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

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

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

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

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

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

256 (5) Interest on unpaid awards.

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

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

264 **17. Notwithstanding the provisions of subsection 15 of**  
265 **this section to the contrary, the division may pay from the**  
266 **second injury fund any of the following second injury fund**  
267 **liabilities prior to those liabilities listed under**  
268 **subsection 15 of this section:**

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

273           (2) Ongoing medical expenses, but not past medical  
274 expenses, under subsection 7 of this section relating to  
275 claims for injuries occurring prior to January 1, 2014,  
276 consistent with a temporary or final award that includes  
277 future medical benefits.

287.280. 1. Every employer subject to the provisions  
2 of this chapter shall, on either an individual or group  
3 basis, insure their entire liability under the workers'  
4 compensation law; and may insure in whole or in part their  
5 employer liability, under a policy of insurance or a self-  
6 insurance plan, except as hereafter provided, with some  
7 insurance carrier authorized to insure such liability in  
8 this state, except that an employer or group of employers  
9 may themselves carry the whole or any part of the liability  
10 without insurance upon satisfying the division of their  
11 ability to do so. If an employer or group of employers have  
12 qualified to self-insure their liability under this chapter,  
13 the division of workers' compensation may, if it finds after  
14 a hearing that the employer or group of employers are  
15 willfully and intentionally violating the provisions of this  
16 chapter with intent to defraud their employees of their  
17 right to compensation, suspend or revoke the right of the  
18 employer or group of employers to self-insure their  
19 liability. If the employer or group of employers fail to  
20 comply with this section, an injured employee or his or her  
21 dependents may elect after the injury either to bring an  
22 action against such employer or group of employers to  
23 recover damages for personal injury or death and it shall

24 not be a defense that the injury or death was caused by the  
25 negligence of a fellow servant, or that the employee had  
26 assumed the risk of the injury or death, or that the injury  
27 or death was caused to any degree by the negligence of the  
28 employee; or to recover under this chapter with the  
29 compensation payments commuted and immediately payable; or,  
30 if the employee elects to do so, he or she may file a  
31 request with the division for payment to be made for medical  
32 expenses out of the second injury fund as provided in  
33 subsection 7 of section 287.220. If the employer or group  
34 of employers are carrying their own insurance, on the  
35 application of any person entitled to compensation and on  
36 proof of default in the payment of any installment, the  
37 division shall require the employer or group of employers to  
38 furnish security for the payment of the compensation, and if  
39 not given, all other compensation shall be commuted and  
40 become immediately payable; provided, that employers engaged  
41 in the mining business shall be required to insure only  
42 their liability hereunder to the extent of the equivalent of  
43 the maximum liability under this chapter for ten deaths in  
44 any one accident, but the employer or group of employers may  
45 carry their own risk for any excess liability. When a group  
46 of employers enter into an agreement to pool their  
47 liabilities under this chapter, individual members will not  
48 be required to qualify as individual self-insurers.

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

56 employer's claims history to an approved advisory  
57 organization.

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

65         4. Any group of employers that have qualified to self-  
66 insure their liability pursuant to this chapter shall file  
67 with the division premium rates, based on pure premium rate  
68 data, adjusted for loss development and loss trending as  
69 filed by the advisory organization with the department of  
70 commerce and insurance pursuant to section 287.975, plus any  
71 estimated expenses and other factors or based on average  
72 rate classifications calculated by the department of  
73 commerce and insurance as taken from the premium rates filed  
74 by the twenty insurance companies providing the greatest  
75 volume of workers' compensation insurance coverage in this  
76 state. The rate is inadequate if funds equal to the full  
77 ultimate cost of anticipated losses and loss adjustment  
78 expenses are not produced when the prospective loss costs  
79 are applied to anticipated payrolls. The provisions of this  
80 subsection shall not apply to those political subdivisions  
81 of this state that have qualified to self-insure their  
82 liability pursuant to this chapter as authorized by section  
83 537.620 on an assessment plan. Any such group may file with  
84 the division a composite rate for all coverages provided  
85 under that section.

86         5. When considering applications for new trust self-  
87 insurers, as described under 8 CSR 50- 3.010, the division

88 shall require proof of payment by each member of not less  
89 than twenty-five percent of the estimated annual premium;  
90 except that, for new members who wish to join an existing  
91 trust self-insurer during the policy year rather than at the  
92 beginning of the policy year, the division shall require  
93 proof of payment of the lesser of the estimated premium of  
94 three months or the estimated premium for the balance of the  
95 policy year.

96 6. Self-insured trusts, as described under 8 CSR 50-  
97 3.010, may invest surplus moneys from a prior trust year not  
98 needed for current obligations. Notwithstanding any  
99 provision of law to the contrary, upon approval by the  
100 division, a self-insured trust may invest up to one hundred  
101 percent of surplus moneys in securities designated by the  
102 state treasurer as acceptable collateral to secure state  
103 deposits under section 30.270.

104 7. Any finding or determination made by the division  
105 under this section may be reviewed as provided in sections  
106 287.470 and 287.480.

107 8. **If a group of employers who have been granted self-**  
108 **insurance authority under this chapter or chapter 537 or a**  
109 **public sector individual employer granted self-insurance**  
110 **authority under this chapter is deemed insolvent, determined**  
111 **to be insolvent, or files for bankruptcy, and fails to pay**  
112 **any of its obligations that are owed to an injured employee**  
113 **or an injured employee's dependent or dependents pursuant to**  
114 **this chapter, whether based upon a compromise settlement**  
115 **approved pursuant to section 287.390 or based upon an award**  
116 **issued pursuant to this chapter, the division shall call**  
117 **upon the entire security posted by the group of employers or**  
118 **public sector individual employer. The division may refer**  
119 **all known losses or cases of the group of employers or**

120 public sector individual employer to a third-party  
121 administrator or any such entity authorized in this state to  
122 administer the workers' compensation cases. The third-party  
123 administrator or entity to which the losses are transferred  
124 shall have the authority to receive the security proceeds  
125 from the division and use the proceeds, after deducting  
126 reasonable administrative expenses, to pay the compensation  
127 benefits owed pursuant to this chapter. The security  
128 proceeds shall not be considered state property and shall  
129 not be subject to appropriation by the general assembly.  
130 Any unused portion of the security proceeds shall be  
131 returned to the division. The group of employers or public  
132 sector individual employer may apply to the division for  
133 release of the unused portion of the security proceeds as  
134 set forth in rules promulgated by the division. Neither the  
135 division nor any third-party administrator shall be  
136 obligated or required to pay any obligations or moneys in an  
137 amount in excess of the security proceeds, and neither the  
138 division nor any third-party administrator shall be liable  
139 for any interest or penalties. The joint and several  
140 liability of the members of a group that is deemed  
141 insolvent, that is determined to be insolvent, or that files  
142 for bankruptcy shall continue and shall not be terminated by  
143 payment of benefits under this subsection.

144 9. No rule or portion of a rule promulgated under the  
145 authority of this section shall become effective unless it  
146 has been promulgated pursuant to the provisions of section  
147 536.024.

148 [9.] 10. Any records submitted pursuant to this  
149 section, and pursuant to any rule promulgated by the  
150 division pursuant to this section, shall be considered  
151 confidential and not subject to chapter 610. Any party to a

152 workers' compensation case involving the party that  
153 submitted the records shall be able to subpoena the records  
154 for use in a workers' compensation case, if the information  
155 is otherwise relevant.

287.480. 1. If an application for review is made to  
2 the commission within twenty days from the date of the  
3 award, the full commission, if the first hearing was not  
4 held before the full commission, shall review the evidence,  
5 or, if considered advisable, as soon as practicable hear the  
6 parties at issue, their representatives and witnesses and  
7 shall make an award and file it in like manner as specified  
8 in section 287.470. Any notice of appeal, application or  
9 other paper required under this law to be filed with the  
10 division or the commission shall, when mailed to or  
11 transmitted by electronic facsimile meeting the requirements  
12 of the division and received by the division or the  
13 commission, be deemed to be filed as of the date endorsed by  
14 the United States post office on the envelope or container  
15 in which such paper is received, or the date received if  
16 filed by facsimile. In instances where the last day for the  
17 filing of any such paper falls on a Sunday or legal holiday,  
18 the filing shall be deemed timely if accomplished on the  
19 next day subsequent which is neither a Sunday or a legal  
20 holiday. When filing by electronic facsimile meeting the  
21 requirements of the division, the parties shall, on the same  
22 date as the facsimile transmission, mail by the United  
23 States mail the original and the requisite number of copies  
24 to the commission. **In addition, the commission may allow**  
25 **filing of applications for review, briefs, motions, and**  
26 **other requests for relief with the commission by electronic**  
27 **means, in such manner as the commission may, by regulation,**  
28 **prescribe.**

29           2. An employer who has been determined by the division  
30 to be an employer subject to and operating pursuant to this  
31 chapter and has also been determined to be uninsured may  
32 file an application for review but such application for  
33 review shall be accompanied with and attached to the  
34 application for review a bond which shall be conditioned for  
35 the satisfaction of the award in full, and if for any reason  
36 the appeal is dismissed or if the award is affirmed or  
37 modified, to satisfy in full such modification of the award  
38 as the commission may award. The surety on such bond shall  
39 be a bank, savings and loan institution or an insurance  
40 company licensed to do business in the state of Missouri.  
41 No appeal to the commission shall be considered filed unless  
42 accompanied by such bond and such bond shall also be a  
43 prerequisite for appeal as provided in section 287.495 and  
44 such appeal pursuant to section 287.495 shall not be  
45 considered filed unless accompanied by such bond. If any  
46 other employer pursuant to section 287.040 would be liable,  
47 the employee shall be paid benefits from the bond until the  
48 bond is exhausted before the section 287.040 employer is  
49 required to pay.

          287.715. 1. For the purpose of providing for revenue  
2 for the second injury fund, every authorized self-insurer,  
3 and every workers' compensation policyholder insured  
4 pursuant to the provisions of this chapter, shall be liable  
5 for payment of an annual surcharge in accordance with the  
6 provisions of this section. The annual surcharge imposed  
7 under this section shall apply to all workers' compensation  
8 insurance policies and self-insurance coverages which are  
9 written or renewed on or after April 26, 1988, including the  
10 state of Missouri, including any of its departments,  
11 divisions, agencies, commissions, and boards or any

12 political subdivisions of the state who self-insure or hold  
13 themselves out to be any part self-insured. Notwithstanding  
14 any law to the contrary, the surcharge imposed pursuant to  
15 this section shall not apply to any reinsurance or  
16 retrocessional transaction.

17 2. Beginning October 31, 2005, and each year  
18 thereafter, the director of the division of workers'  
19 compensation shall estimate the amount of benefits payable  
20 from the second injury fund during the following calendar  
21 year and shall calculate the total amount of the annual  
22 surcharge to be imposed during the following calendar year  
23 upon all workers' compensation policyholders and authorized  
24 self-insurers. The amount of the annual surcharge  
25 percentage to be imposed upon each policyholder and self-  
26 insured for the following calendar year commencing with the  
27 calendar year beginning on January 1, 2006, shall be set at  
28 and calculated against a percentage, not to exceed three  
29 percent, of the policyholder's or self-insured's workers'  
30 compensation net deposits, net premiums, or net assessments  
31 for the previous policy year, rounded up to the nearest one-  
32 half of a percentage point, that shall generate, as nearly  
33 as possible, one hundred ten percent of the moneys to be  
34 paid from the second injury fund in the following calendar  
35 year, less any moneys contained in the fund at the end of  
36 the previous calendar year. All policyholders and self-  
37 insurers shall be notified by the division of workers'  
38 compensation within ten calendar days of the determination  
39 of the surcharge percent to be imposed for, and paid in, the  
40 following calendar year. The net premium equivalent for  
41 individual self-insured employers shall be based on average  
42 rate classifications calculated by the department of  
43 commerce and insurance as taken from premium rates filed by

44 the twenty insurance companies providing the greatest volume  
45 of workers' compensation insurance coverage in this state.  
46 For employers qualified to self-insure their liability  
47 pursuant to this chapter, the rates filed by such group of  
48 employers in accordance with subsection 4 of section 287.280  
49 shall be the net premium equivalent. Any group of political  
50 subdivisions of this state qualified to self-insure their  
51 liability pursuant to this chapter as authorized by section  
52 537.620 may choose either the average rate classification  
53 method or the filed rate method, provided that the method  
54 used may only be changed once without receiving the consent  
55 of the director of the division of workers' compensation.  
56 The director may advance funds from the workers'  
57 compensation fund to the second injury fund if surcharge  
58 collections prove to be insufficient. Any funds advanced  
59 from the workers' compensation fund to the second injury  
60 fund must be reimbursed by the second injury fund no later  
61 than December thirty-first of the year following the  
62 advance. The surcharge shall be collected from  
63 policyholders by each insurer at the same time and in the  
64 same manner that the premium is collected, but no insurer or  
65 its agent shall be entitled to any portion of the surcharge  
66 as a fee or commission for its collection. The surcharge is  
67 not subject to any taxes, licenses or fees.

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

70 4. Such surcharge amounts shall be paid quarterly by  
71 insurers and self-insurers, and insurers shall pay the  
72 amounts not later than the thirtieth day of the month  
73 following the end of the quarter in which the amount is  
74 received from policyholders. If the director of the  
75 division of workers' compensation fails to calculate the

76 surcharge by the thirty-first day of October of any year for  
77 the following year, any increase in the surcharge ultimately  
78 set by the director shall not be effective for any calendar  
79 quarter beginning less than sixty days from the date the  
80 director makes such determination.

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

91 6. Notwithstanding subsection 2 of this section to the  
92 contrary, the director of the division of workers'  
93 compensation shall collect a supplemental surcharge not to  
94 exceed three percent for calendar years 2014 to [2021] **2022**  
95 of the policyholder's or self-insured's workers'  
96 compensation net deposits, net premiums, or net assessments  
97 for the previous policy year, rounded up to the nearest one-  
98 half of a percentage point. **For calendar year 2023, the**  
99 **director of the division of workers' compensation shall**  
100 **collect a supplemental surcharge not to exceed two and one-**  
101 **half percent of the policyholder's or self-insured's**  
102 **workers' compensation net deposits, net premiums, or net**  
103 **assessments for the previous policy year, rounded up to the**  
104 **nearest one-half of a percentage point.** All policyholders  
105 and self-insurers shall be notified by the division of the  
106 supplemental surcharge percentage to be imposed for such  
107 period of time as part of the notice provided in subsection

108 2 of this section. The provisions of this subsection shall  
109 expire on December 31, **[2021] 2023**.

110 7. Funds collected under the provisions of this  
111 chapter shall be the sole funding source of the second  
112 injury fund.

✓