

FIRST REGULAR SESSION

# SENATE BILL NO. 668

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2452S.011

## AN ACT

To repeal sections 287.141, 287.150, 287.210, 287.220, 287.266, 287.280, 287.310, 287.430, 287.710, 287.713, and 287.715, RSMo, and to enact in lieu thereof ten new sections relating to the second injury fund, with an effective date.

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

Section A. Sections 287.141, 287.150, 287.210, 287.220, 287.266, 287.280, 287.310, 287.430, 287.710, 287.713, and 287.715, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 287.141, 287.150, 287.210, 287.220, 287.266, 287.280, 287.310, 287.430, 287.710, and 287.713, to read as follows:

287.141. 1. The purpose of this section is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical rehabilitation shall be under the control of and administered by the director of the division of workers' compensation. The division of workers' compensation shall make such rules and regulations as may be necessary to carry out the purposes of this section, subject to the approval of the labor and industrial relations commission of Missouri.

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and physical restoration services. No facility or institution shall be

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

16 considered as qualified unless it is equipped to provide physical rehabilitation  
17 services for persons suffering either from some specialized type of disability or  
18 general type of disability within the field of industrial injury, and unless such  
19 facility or institution is operated under the supervision of a physician qualified  
20 to render physical rehabilitation service and is staffed with trained and qualified  
21 personnel and has received a certificate of qualification from the division of  
22 workers' compensation. No physician shall be considered as qualified unless he  
23 has had the experience prescribed by the division.

24         3. In any case of serious injury involving disability following the period  
25 of rendition of medical aid as provided by subsection 1 of section 287.140, where  
26 physical rehabilitation is necessary if the employer or insurer shall offer such  
27 physical rehabilitation to the injured employee and such physical rehabilitation  
28 is accepted by the employee, then in such case the director of the division of  
29 workers' compensation shall be immediately notified thereof and thereupon enter  
30 his approval to such effect, and the director of the division of workers'  
31 compensation shall requisition the payment of forty dollars per week benefit from  
32 the [second injury] **workers' compensation** fund in the state treasury to be  
33 paid to the employee while he is actually being rehabilitated, and shall  
34 immediately notify the state treasurer thereof by furnishing him with a copy of  
35 his order. But in no case shall the period of physical rehabilitation extend beyond  
36 twenty weeks except in unusual cases and then only by a special order of the  
37 division of workers' compensation for such additional period as the division may  
38 authorize.

39         4. In all cases where physical rehabilitation is offered and accepted or  
40 ordered by the division, the employer or insurer shall have the right to select any  
41 physician, facility, or institution that has been found qualified by the division of  
42 workers' compensation as above set forth.

43         5. If the parties disagree as to such physical rehabilitation treatment,  
44 where such treatment appears necessary, then either the employee, the employer,  
45 or insurer may file a request with the division of workers' compensation for an  
46 order for physical rehabilitation and the director of the division shall hear the  
47 parties within ten days after the filing of the request. The director of the division  
48 shall forthwith notify the parties of the time and place of the hearing, and the  
49 hearing shall be held at a place to be designated at the discretion of the  
50 division. The director of the division may conduct such hearing or he may direct  
51 one of the administrative law judges to conduct same. Such hearing shall be  
52 informal in all respects. The director of the division shall, after considering all

53 evidence at such hearing, within ten days make his order in the matter, either  
54 denying such request or ordering the employer or insurer within a reasonable  
55 time, to furnish physical rehabilitation, and ordering the employee to accept the  
56 same, at the expense of the employer or insurer. When the order requires  
57 physical rehabilitation, it shall also include an order to requisition the payment  
58 of forty dollars per week out of the [second injury] **workers' compensation**  
59 fund in the state treasury to the injured employee during such time as such  
60 employee is actually receiving physical rehabilitation.

61 6. In every case where physical rehabilitation shall be ordered, the  
62 director of the division may, in his discretion, order the employer or insurer to  
63 furnish transportation to the injured employee to such rehabilitation facility or  
64 institution.

65 7. As used in this section, the term "physical rehabilitation" shall be  
66 deemed to include medical, surgical and hospital treatment in the same respect  
67 as required to be furnished under subsection 1 of section 287.140.

68 8. An appeal from any order of the division of workers' compensation  
69 hereby created to the appellate court may be taken and governed in all respects  
70 in the same manner as appeals in workers' compensation cases generally under  
71 section 287.495.

287.150. 1. Where a third person is liable to the employee or to the  
2 dependents, for the injury or death, the employer shall be subrogated to the right  
3 of the employee or to the dependents against such third person, and the recovery  
4 by such employer shall not be limited to the amount payable as compensation to  
5 such employee or dependents, but such employer may recover any amount which  
6 such employee or his dependents would have been entitled to recover. Any  
7 recovery by the employer against such third person shall be apportioned between  
8 the employer and employee or his dependents using the provisions of subsections  
9 2 and 3 of this section.

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

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

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

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

42           4. In any case in which an injured employee has been paid benefits from  
43 the [second injury] **workers' compensation** fund as provided in subsection 3  
44 of section 287.141, and recovery is had against the third party liable to the  
45 employee for the injury, the [second injury] **workers' compensation** fund shall  
46 be subrogated to the rights of the employee against said third party to the extent  
47 of the payments made to him from such fund, subject to provisions of subsections  
48 2 and 3 of this section.

49           5. No construction design professional who is retained to perform  
50 professional services on a construction project or any employee of a construction  
51 design professional who is assisting or representing the construction design  
52 professional in the performance of professional services on the site of the  
53 construction project shall be liable for any injury resulting from the employer's  
54 failure to comply with safety standards on a construction project for which  
55 compensation is recoverable under the workers' compensation law, unless

56 responsibility for safety practices is specifically assumed by contract. The  
57 immunity provided by this subsection to any construction design professional  
58 shall not apply to the negligent preparation of design plans or specifications.

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

287.210. 1. After an employee has received an injury he shall from time  
2 to time thereafter during disability submit to reasonable medical examination at  
3 the request of the employer, his insurer, the commission, the division or an  
4 administrative law judge, the time and place of which shall be fixed with due  
5 regard to the convenience of the employee and his physical condition and ability  
6 to attend. The employee may have his own physician present, and if the  
7 employee refuses to submit to the examination, or in any way obstructs it, his  
8 right to compensation shall be forfeited during such period unless in the opinion  
9 of the commission the circumstances justify the refusal or obstruction.

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

20         3. The testimony of any physician who treated or examined the injured  
21 employee shall be admissible in evidence in any proceedings for compensation  
22 under this chapter, but only if the medical report of the physician has been made

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

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

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

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

56 7. The testimony of a treating or examining physician may be submitted  
57 in evidence on the issues in controversy by a complete medical report and shall  
58 be admissible without other foundational evidence subject to compliance with the  
59 following procedures. The party intending to submit a complete medical report

60 in evidence shall give notice at least sixty days prior to the hearing to all parties  
61 and shall provide reasonable opportunity to all parties to obtain  
62 cross-examination testimony of the physician by deposition. The notice shall  
63 include a copy of the report and all the clinical and treatment records of the  
64 physician including copies of all records and reports received by the physician  
65 from other health care providers. The party offering the report must make the  
66 physician available for cross-examination testimony by deposition not later than  
67 seven days before the matter is set for hearing, and each cross-examiner shall  
68 compensate the physician for the portion of testimony obtained in an amount not  
69 to exceed a rate of reasonable compensation taking into consideration the  
70 specialty practiced by the physician. Cross-examination testimony shall not bind  
71 the cross-examining party. Any testimony obtained by the offering party shall be  
72 at that party's expense on a proportional basis, including the deposition fee of the  
73 physician. Upon request of any party, the party offering a complete medical  
74 report in evidence must also make available copies of X rays or other diagnostic  
75 studies obtained by or relied upon by the physician. Within ten days after receipt  
76 of such notice a party shall dispute whether a report meets the requirements of  
77 a complete medical report by providing written objections to the offering party  
78 stating the grounds for the dispute, and at the request of any party, the  
79 administrative law judge shall rule upon such objections upon pretrial hearing  
80 whether the report meets the requirements of a complete medical report and upon  
81 the admissibility of the report or portions thereof. If no objections are filed the  
82 report is admissible, and any objections thereto are deemed waived. Nothing  
83 herein shall prevent the parties from agreeing to admit medical reports or records  
84 by consent. [The provisions of this subsection shall not apply to claims against  
85 the second injury fund.]

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

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

287.220. 1. All cases of permanent disability where there has been  
2 previous disability shall be compensated as herein provided. Compensation shall

3 be computed on the basis of the average earnings at the time of the last injury.  
4 If any employee who has a preexisting permanent partial disability whether from  
5 compensable injury or otherwise, of such seriousness as to constitute a hindrance  
6 or obstacle to employment or to obtaining reemployment if the employee becomes  
7 unemployed, and the preexisting permanent partial disability, if a body as a  
8 whole injury, equals a minimum of fifty weeks of compensation or, if a major  
9 extremity injury only, equals a minimum of fifteen percent permanent partial  
10 disability, according to the medical standards that are used in determining such  
11 compensation, receives a subsequent compensable injury resulting in additional  
12 permanent partial disability so that the degree or percentage of disability, in an  
13 amount equal to a minimum of fifty weeks compensation, if a body as a whole  
14 injury or, if a major extremity injury only, equals a minimum of fifteen percent  
15 permanent partial disability, caused by the combined disabilities is substantially  
16 greater than that which would have resulted from the last injury, considered  
17 alone and of itself, and if the employee is entitled to receive compensation on the  
18 basis of the combined disabilities, the employer at the time of the last injury shall  
19 be liable only for the degree or percentage of disability which would have resulted  
20 from the last injury had there been no preexisting disability. After the  
21 compensation liability of the employer for the last injury, considered alone, has  
22 been determined by an administrative law judge or the commission, the degree  
23 or percentage of employee's disability that is attributable to all injuries or  
24 conditions existing at the time the last injury was sustained shall then be  
25 determined by that administrative law judge or by the commission and the degree  
26 or percentage of disability which existed prior to the last injury plus the disability  
27 resulting from the last injury, if any, considered alone, shall be deducted from the  
28 combined disability, and compensation for the balance, if any, shall be paid out  
29 of a special fund known as the second injury fund, hereinafter provided for. If the  
30 previous disability or disabilities, whether from compensable injury or otherwise,  
31 and the last injury together result in total and permanent disability, the  
32 minimum standards under this subsection for a body as a whole injury or a major  
33 extremity injury shall not apply and the employer at the time of the last injury  
34 shall be liable only for the disability resulting from the last injury considered  
35 alone and of itself; except that if the compensation for which the employer at the  
36 time of the last injury is liable is less than the compensation provided in this  
37 chapter for permanent total disability, then in addition to the compensation for  
38 which the employer is liable and after the completion of payment of the  
39 compensation by the employer, the employee shall be paid the remainder of the



40 compensation that would be due for permanent total disability under section  
41 287.200 out of a special fund known as the "Second Injury Fund" hereby created  
42 exclusively for the purposes as in this section provided and for special weekly  
43 benefits in rehabilitation cases as provided in section 287.141. Maintenance of  
44 the second injury fund shall be as provided by section 287.710. The state  
45 treasurer shall be the custodian of the second injury fund which shall be  
46 deposited the same as are state funds and any interest accruing thereon shall be  
47 added thereto. The fund shall be subject to audit the same as state funds and  
48 accounts and shall be protected by the general bond given by the state  
49 treasurer. Upon the requisition of the director of the division of workers'  
50 compensation, warrants on the state treasurer for the payment of all amounts  
51 payable for compensation and benefits out of the second injury fund shall be  
52 issued.

53       2. In all cases in which a recovery against the second injury fund is  
54 sought for permanent partial disability, permanent total disability, or death, the  
55 state treasurer as custodian thereof shall be named as a party, and shall be  
56 entitled to defend against the claim. The state treasurer, with the advice and  
57 consent of the attorney general of Missouri, may enter into compromise  
58 settlements as contemplated by section 287.390, or agreed statements of fact that  
59 would affect the second injury fund. All awards for permanent partial disability,  
60 permanent total disability, or death affecting the second injury fund shall be  
61 subject to the provisions of this chapter governing review and appeal. For all  
62 claims filed against the second injury fund on or after July 1, 1994, the attorney  
63 general shall use assistant attorneys general except in circumstances where an  
64 actual or potential conflict of interest exists, to provide legal services as may be  
65 required in all claims made for recovery against the fund. Any legal expenses  
66 incurred by the attorney general's office in the handling of such claims, including,  
67 but not limited to, medical examination fees, expert witness fees, court reporter  
68 expenses, travel costs, and related legal expenses shall be paid by the  
69 fund. Effective July 1, 1993, the payment of such legal expenses shall be  
70 contingent upon annual appropriations made by the general assembly, from the  
71 fund, to the attorney general's office for this specific purpose.

72       3. If more than one injury in the same employment causes concurrent  
73 temporary disabilities, compensation shall be payable only for the longest and  
74 largest paying disability.

75       4. If more than one injury in the same employment causes concurrent and  
76 consecutive permanent partial disability, compensation payments for each

77 subsequent disability shall not begin until the end of the compensation period of  
78 the prior disability.

79         5. If an employer fails to insure or self-insure as required in section  
80 287.280, funds from the second injury fund may be withdrawn to cover the fair,  
81 reasonable, and necessary expenses to cure and relieve the effects of the injury  
82 or disability of an injured employee in the employ of an uninsured employer, or  
83 in the case of death of an employee in the employ of an uninsured employer,  
84 funds from the second injury fund may be withdrawn to cover fair, reasonable,  
85 and necessary expenses in the manner required in sections 287.240 and 287.241.  
86 In defense of claims arising under this subsection, the treasurer of the state of  
87 Missouri, as custodian of the second injury fund, shall have the same defenses to  
88 such claims as would the uninsured employer. Any funds received by the  
89 employee or the employee's dependents, through civil or other action, must go  
90 towards reimbursement of the second injury fund, for all payments made to the  
91 employee, the employee's dependents, or paid on the employee's behalf, from the  
92 second injury fund pursuant to this subsection. The office of the attorney general  
93 of the state of Missouri shall bring suit in the circuit court of the county in which  
94 the accident occurred against any employer not covered by this chapter as  
95 required in section 287.280.

96         6. Every three years the second injury fund shall have an actuarial study  
97 made to determine the solvency of the fund, appropriate funding level of the fund,  
98 and forecasted expenditures from the fund. The first actuarial study shall be  
99 completed prior to July 1, 1988. The expenses of such actuarial studies shall be  
100 paid out of the fund for the support of the division of workers' compensation.

101         7. The director of the division of workers' compensation shall maintain the  
102 financial data and records concerning the fund for the support of the division of  
103 workers' compensation and the second injury fund. The division shall also  
104 compile and report data on claims made pursuant to subsection 9 of this  
105 section. The attorney general shall provide all necessary information to the  
106 division for this purpose.

107         8. All claims for fees and expenses filed against the second injury fund  
108 and all records pertaining thereto shall be open to the public.

109         9. Any employee who at the time a compensable work-related injury is  
110 sustained is employed by more than one employer, the employer for whom the  
111 employee was working when the injury was sustained shall be responsible for  
112 wage loss benefits applicable only to the earnings in that employer's employment  
113 and the injured employee shall be entitled to file a claim against the second

114 injury fund for any additional wage loss benefits attributed to loss of earnings  
115 from the employment or employments where the injury did not occur, up to the  
116 maximum weekly benefit less those benefits paid by the employer in whose  
117 employment the employee sustained the injury. The employee shall be entitled  
118 to a total benefit based on the total average weekly wage of such employee  
119 computed according to subsection 8 of section 287.250. The employee shall not  
120 be entitled to a greater rate of compensation than allowed by law on the date of  
121 the injury. The employer for whom the employee was working where the injury  
122 was sustained shall be responsible for all medical costs incurred in regard to that  
123 injury.

124 **10. No person shall be eligible to receive benefits from the**  
125 **second injury fund for injuries occurring on or after January 1,**  
126 **2008. The division shall compute moneys to persons eligible for such**  
127 **award for injuries occurring before January 1, 2008, and assess**  
128 **employers. Any remaining funds after all awards have been satisfied**  
129 **shall lapse into the workers' compensation fund.**

130 **11. The division shall promulgate rules to implement the**  
131 **provisions of this section. Any rule or portion of a rule, as that term is**  
132 **defined in section 536.010, RSMo, that is created under the authority**  
133 **delegated in this section shall become effective only if it complies with**  
134 **and is subject to all of the provisions of chapter 536, RSMo, and, if**  
135 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo,**  
136 **are nonseverable and if any of the powers vested with the general**  
137 **assembly under chapter 536, RSMo, to review, to delay the effective**  
138 **date, or to disapprove and annul a rule are subsequently held**  
139 **unconstitutional, then the grant of rulemaking authority and any rule**  
140 **proposed or adopted after August 28, 2007, shall be invalid and void.**

287.266. 1. As used in this section, the following terms mean:

2 (1) "Provider", any individual, corporation, public or private entity that  
3 has entered into an agreement with the state to provide any service set out in  
4 section 208.152, RSMo, and subsequent amendments;

5 (2) "Person eligible for public assistance", any individual who is or was  
6 eligible for medical assistance under the laws of this state.

7 2. Payments made to or on behalf of a person eligible for public assistance  
8 as the result of any compensable injury, occupational disease or disability as  
9 defined by this chapter shall be a debt due the state, and recovery of same shall  
10 be a recognized action pursuant to this chapter.

11           3. The state shall have a lien upon any funds owed by any employer that  
12 are or might be due under any insurance agreement or self-insurance authority  
13 in effect at the time the medical expense or any portion thereof was paid by the  
14 department of social services or its designated division.

15           4. The state shall have a right of subrogation to any funds owed to or  
16 received by the employee or any person, corporation, public agency or private  
17 agency acting on his behalf notwithstanding any other provisions of this chapter.

18           5. The department of social services or its designated division may  
19 maintain an appropriate action to recover funds due under this section pursuant  
20 to the workers' compensation law [or the second injury fund], which includes the  
21 exercise of all appeal rights afforded by the laws of this state.

22           6. The department shall have a right to recover the full amount of its  
23 payments when payments are made to a provider under this chapter if the  
24 payments were made on behalf of a person eligible for public assistance for an  
25 injury, occupational disease, or disability which is compensable under this  
26 chapter.

27           7. This debt due the state shall be subordinate only to the fee rights of the  
28 injured employee's attorney pursuant to this chapter, and the state shall not be  
29 required to pay any portion of the fees or costs incurred by the employee or the  
30 employer.

31           8. Application for and acceptance of public assistance made to or on behalf  
32 of the injured employee shall constitute an assignment of rights to the  
33 department of social services for reimbursement of funds expended by the  
34 department of social services in the treatment of a compensable injury.

35           9. The attorney shall notify the department of social services upon  
36 representation of each client who was eligible for public assistance as provided  
37 by sections 208.151 to 208.159, RSMo, and section 208.162, RSMo, prior to, during  
38 or subsequent to the date of injury, that the attorney was retained to pursue the  
39 client's legal rights related to the compensable injury.

40           10. The administrative law judge, pursuant to authority granted under  
41 section 287.610, shall apportion the debt due the state between the injured  
42 worker and the injured worker's employer or their designated representatives  
43 when an agreement cannot be reached regarding the respective liability for money  
44 expended by the department of social services on behalf of the injured employee,  
45 but in no case shall the debt due the state be reduced.

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

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

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

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

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

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

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

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

287.310. 1. Every policy of insurance against liability under this chapter  
2 shall be in accordance with the provisions of this chapter and shall be in a form  
3 approved by the director of the department of insurance. Such policy shall  
4 contain an agreement that the insurer accepts all of the provisions of this  
5 chapter, that the same may be enforced by any person entitled to any rights  
6 under this chapter as well as by the employer, that the insurer shall be a party

7 to all agreements or proceedings under this chapter, and his appearance may be  
8 entered therein and jurisdiction over his person may be obtained as in this  
9 chapter provided, and such covenants shall be enforceable notwithstanding any  
10 default of the employer.

11 2. Any insurer issuing a workers' compensation policy may offer, as a part  
12 of the policy or as an optional endorsement to the policy, a deductible plan or  
13 plans to allow the insured employer to self-insure for the deductible amount,  
14 subject to the approval of the director of insurance. No deductible plan shall be  
15 approved which permits, directly or indirectly, any part of the deductible to be  
16 charged to or passed on to an employee of the insured employer.

17 3. Any deductible plan authorized under this section may provide for the  
18 agreement between the insurer and the insured employer regarding the  
19 conditions under which the employer shall be responsible for the payment of any  
20 deductible amount to the person or health care provider entitled to such payment  
21 pursuant to this chapter, except that no deductible plan shall be approved unless  
22 the insurer shall retain the ultimate responsibility for the payment of  
23 compensable claims. Where the agreement provides for the payment of the  
24 deductible amount by the insurer, the insurer shall pay all the deductible amount  
25 applicable to a compensable claim directly to the person or health care provider  
26 entitled to the benefit pursuant to this chapter, and shall then be reimbursed by  
27 the insured employer for such payments. The insured employer shall be liable  
28 to the insurer up to the limit of the deductible, and any failure on the part of the  
29 insured employer to provide such reimbursements shall be treated under the  
30 workers' compensation policy in the same manner as a nonpayment of  
31 premium. [An employer's failure to reimburse deductible amounts to the insurer  
32 shall not cause the unpaid amount to be paid from the second injury fund under  
33 section 287.220.] The insurer shall have the right to offset unpaid deductible  
34 amounts against unearned premiums, if any, in the event of a cancellation of the  
35 policy.

36 4. Deductible plans shall provide appropriate premium reductions, as  
37 approved by the director of insurance, to reflect the type and level of the  
38 deductible amount selected. Losses paid by the employer under the deductible  
39 shall be credited against the employer's experience modification while the  
40 deductible option is used, unless the employer exercises the right to purchase a  
41 gross reportable deductible plan.

42 5. An insurer shall not be required to offer a deductible if, as a result of  
43 a credit investigation, the insurer determines that the employer does not have the

44 financial ability to be responsible for the payment of deductible amounts.

45           6. An insurer shall service and, if necessary, defend all claims that arise  
46 during the policy period, including those claims payable in whole or in part from  
47 the deductible amount.

48           7. No employer who self-insures for a deductible amount as provided in  
49 this section shall harass, discharge, or otherwise discriminate against any  
50 employee because the employee has taken any action or is considering taking  
51 action which might result in the insured employer being required to pay a  
52 deductible amount.

53           8. Any rating organization or advisory organization authorized by the  
54 provisions of section 287.330 may file on behalf of its members deductible plans  
55 for approval by the director of insurance.

56           9. In calculating the administrative surcharge owed pursuant to the  
57 provisions of this chapter for workers' compensation policies with deductible  
58 options, the administrative surcharge owed will be based upon the total  
59 premiums, which would have been paid for the deductible credit portion of the  
60 policy. [The second injury fund surcharge owed by the employer who purchases  
61 a deductible policy will be assessed upon the total premiums which would have  
62 been paid in the absence of the deductible option.] The premium taxes owed  
63 pursuant to this chapter for workers' compensation policies with deductible  
64 options shall be assessed upon those total premiums paid upon the insurance  
65 policy excluding the deductible credit portion of the policy. The portion of the  
66 workers' compensation policy with a deductible option that is subject to an  
67 administrative surcharge shall not be subject to premium taxes, nor with respect  
68 to foreign insurance companies, the retaliatory tax imposed pursuant to section  
69 375.916, RSMo.

70           10. The director of insurance shall, by rule, specify any data reporting  
71 requirements applicable to workers' compensation policies with deductible  
72 options.

          287.430. [Except for a claim for recovery filed against the second injury  
2 fund,] No proceedings for compensation under this chapter shall be maintained  
3 unless a claim therefor is filed with the division within two years after the date  
4 of injury or death, or the last payment made under this chapter on account of the  
5 injury or death, except that if the report of the injury or the death is not filed by  
6 the employer as required by section 287.380, the claim for compensation may be  
7 filed within three years after the date of injury, death, or last payment made  
8 under this chapter on account of the injury or death. The filing of any form,



9 report, receipt, or agreement, other than a claim for compensation, shall not toll  
10 the running of the periods of limitation provided in this section. The filing of the  
11 report of injury or death three years or more after the date of injury, death, or  
12 last payment made under this chapter on account of the injury or death, shall not  
13 toll the running of the periods of limitation provided in this section, nor shall  
14 such filing reactivate or revive the period of time in which a claim may be filed.  
15 [A claim against the second injury fund shall be filed within two years after the  
16 date of the injury or within one year after a claim is filed against an employer or  
17 insurer pursuant to this chapter, whichever is later.] In all other respects the  
18 limitations shall be governed by the law of civil actions other than for the  
19 recovery of real property, but the appointment of a conservator shall be deemed  
20 the termination of the legal disability from minority or disability as defined in  
21 chapter 475, RSMo. The statute of limitations contained in this section is one of  
22 extinction and not of repose.

287.710. 1. Every such insurance carrier or self-insurer, on or before the  
2 first day of March of each year, shall make a return, verified by the affidavit of  
3 its president and secretary or other chief officers or agents, to the director of the  
4 department of insurance, stating the amount of all such gross premiums or  
5 deposits and credits during the year ending on the thirty-first day of December,  
6 next preceding.

7 2. The amount of the tax due for each calendar year shall be paid in four  
8 approximately equal estimated quarterly installments, and a fifth reconciling  
9 installment. The first four installments shall be based upon the application of  
10 the current calendar year's tax rate to the premium for the immediately preceding  
11 taxable year ending on the thirty-first day of December, next preceding. The  
12 quarterly installments shall be made on the first day of March, the first day of  
13 June, the first day of September and the first day of December. Immediately  
14 after receiving certification from the director of the department of insurance of  
15 the amount of tax due from the various companies or self-insurers, the director  
16 of revenue shall notify and assess each company or self-insurer the amount of  
17 taxes on its premiums for the calendar year ending on the thirty-first day of  
18 December, next preceding. The director of revenue shall also notify and assess  
19 each company or self-insurer the amount of the estimated quarterly installments  
20 to be made for the calendar year. If the amount of the actual tax due for any year  
21 exceeds the total of the installments made for such year, the balance of the tax  
22 due shall be paid on the first day of June of the year following, together with the  
23 regular quarterly payment due at that time. If the total amount of the tax

24 actually due is less than the total amount of the installments actually paid, the  
25 amount by which the amount paid exceeds the amount due shall be credited  
26 against the tax for the following year and deducted from the quarterly  
27 installment otherwise due on the first day of June. If the March first quarterly  
28 installment made by a company or self-insurer is less than the amount assessed  
29 by the director of revenue, the difference will be due on June first, but no interest  
30 will accrue to the state on the difference unless the amount paid by the company  
31 or self-insurer is less than eighty percent of one-fourth of the total amount of tax  
32 assessed by the director of revenue for the immediately preceding taxable year.

33         3. Upon the receipt of the returns and verification by the director of the  
34 division of workers' compensation as to the percent of tax to be imposed, the  
35 director of the department of insurance shall certify the amount of tax due from  
36 the various insurance carriers or self-insurers on the basis and at the rate  
37 provided in section 287.690, and make a schedule thereof, duplicate copies of  
38 which, properly certified by the director, shall be filed in the offices of the  
39 revenue department, the state treasurer, and the division of workers'  
40 compensation on or before the thirtieth day of April of each year. If the taxes  
41 provided for in this section are not paid, the department of revenue shall certify  
42 the fact to the director of the department of insurance who shall thereafter  
43 suspend the delinquent carriers of insurance or self-insurers from the further  
44 transaction of business in this state until the taxes are paid.

45         4. Upon receipt of the money all such moneys shall be deposited to the  
46 credit of the fund for the support of the division of workers' compensation.

47         5. The tax collected for implementing the workers' compensation fund, and  
48 any interest accruing thereon, under the police power of the state from those  
49 specified in sections 287.690, 287.715, and 287.730 shall be used for the purpose  
50 of making effective the law to relieve victims of industrial injuries from having  
51 individually to bear the burden of misfortune or becoming charges upon society  
52 and for the further purpose of providing for the physical rehabilitation of the  
53 victims of industrial injuries, and for no other purposes. It is hereby made the  
54 express duty of every person exercising any official authority or responsibility in  
55 and for the state of Missouri sacredly to safeguard and preserve all funds  
56 collected, and any interest accruing thereon, under and by virtue of sections  
57 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

58         6. The funds created by virtue of sections 287.220, 287.690, 287.715, and  
59 287.730 shall be exempt from the provisions of section 33.080, RSMo, specifically  
60 as they relate to the transfer of fund balances and any interest thereon to the

61 ordinary revenue, and the director of the division of workers' compensation may  
62 direct the state treasurer to invest all or part of these funds in interest-bearing  
63 accounts as provided in article IV, section 15 of the Constitution of the state of  
64 Missouri[, and any unexpended balance in the second injury fund at the end of  
65 any appropriation period shall be a credit in the second injury fund and shall be  
66 the amount of the fund at the beginning of the appropriation period next  
67 immediately following].

287.713. 1. The director of the division of workers' compensation shall  
2 make and submit to the governor, on or before the first day of February, in each  
3 year, a report on the expenditures made from the second injury fund in each of  
4 the four categories of liability for the calendar year next preceding and shall  
5 make and prepare, as is required, budget requests for payments from the second  
6 injury fund.

7 **2. This section shall terminate on February 1, 2008.**

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

15 2. Beginning October 31, 2005, and each year thereafter,  
16 the director of the division of workers' compensation shall estimate  
17 the amount of benefits payable from the second injury fund during  
18 the following calendar year and shall calculate the total amount of  
19 the annual surcharge to be imposed during the following calendar  
20 year upon all workers' compensation policyholders and authorized  
21 self-insurers. The amount of the annual surcharge percentage to  
22 be imposed upon each policyholder and self-insured for the  
23 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, RSMo, shall be based on average rate classifications calculated by the department of insurance 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

61 later than the thirtieth day of the month following the end of the  
62 quarter in which the amount is received from policyholders. If the  
63 director of the division of workers' compensation fails to calculate  
64 the surcharge by the thirty-first day of October of any year for the  
65 following year, any increase in the surcharge ultimately set by the  
66 director shall not be effective for any calendar quarter beginning  
67 less than sixty days from the date the director makes such  
68 determination.

69 5. If a policyholder or self-insured fails to make payment of  
70 the surcharge or an insurer fails to make timely transfer to the  
71 division of surcharges actually collected from policyholders, as  
72 required by this section, a penalty of one-half of one percent of the  
73 surcharge unpaid, or untransferred, shall be assessed against the  
74 liable policyholder, self-insured or insurer. Penalties assessed  
75 under this subsection shall be collected in a civil action by a  
76 summary proceeding brought by the director of the division of  
77 workers' compensation.]

78 Section B. Section A of this act shall become effective on January 1, 2008.

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