

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE NO. 2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1**  
**97TH GENERAL ASSEMBLY**

0225H.09C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, 287.745, 287.955, and 287.957, RSMo, and to enact in lieu thereof fifteen new sections relating to workers' compensation, with an existing penalty provision and an emergency clause for certain sections.

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

Section A. Sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.220, 287.610, 287.690, 287.715, 287.745, 287.955, and 287.957, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, 287.120, 287.140, 287.150, 287.200, 287.210, 287.213, 287.220, 287.610, 287.690, 287.715, 287.745, 287.955, and 287.957, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, and operator of a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating  
12 within a commercial zone as defined in section 390.020 or 390.041, or operating under a  
13 certificate issued by the Missouri department of transportation or by the United States  
14 Department of Transportation, or any of its subagencies.

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

19 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen  
20 out of and in the course of employment. An injury by accident is compensable only if the  
21 accident was the prevailing factor in causing both the resulting medical condition and disability.  
22 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing  
23 both the resulting medical condition and disability.

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

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

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

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

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

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

44 4. "Death" when mentioned as a basis for the right to compensation means only death  
45 resulting from such violence and its resultant effects occurring within three hundred weeks after

46 the accident; except that in cases of occupational disease, the limitation of three hundred weeks  
47 shall not be applicable.

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

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

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

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

67 9. For the purposes of this chapter, the term "minor" means a person who has not  
68 attained the age of eighteen years; except that, for the purpose of computing the compensation  
69 provided for in this chapter, the provisions of section 287.250 shall control.

70 10. In applying the provisions of this chapter, it is the intent of the legislature to reject  
71 and abrogate earlier case law interpretations on the meaning of or definition of "accident",  
72 "occupational disease", "arising out of", and "in the course of the employment" to include, but  
73 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d  
74 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and  
75 *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,  
76 or following those cases.

77 **11. For the purposes of this chapter, "occupational diseases due to toxic exposure"**  
78 **shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's**  
79 **pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute**  
80 **myelogenous leukemia, and myelodysplastic syndrome.**

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury **or death** by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

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

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

6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590 if a direct causal relationship is

36 established, or psychological stress of firefighters of a paid fire department if a direct causal  
37 relationship is established.

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

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

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,  
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for  
3 personal injury or death of the employee by accident **or occupational disease** arising out of and  
4 in the course of the employee's employment. Any employee of such employer shall not be liable  
5 for any injury or death for which compensation is recoverable under this chapter and every  
6 employer and employees of such employer shall be released from all other liability whatsoever,  
7 whether to the employee or any other person, except that an employee shall not be released from  
8 liability for injury or death if the employee engaged in an affirmative negligent act that  
9 purposefully and dangerously caused or increased the risk of injury. The term "accident" as used  
10 in this section shall include, but not be limited to, injury or death of the employee caused by the  
11 unprovoked violence or assault against the employee by any person.

12 2. The rights and remedies herein granted to an employee shall exclude all other rights  
13 and remedies of the employee, his wife, her husband, parents, personal representatives,  
14 dependents, heirs or next kin, at common law or otherwise, on account of such injury or death  
15 **by accident or occupational disease**, except such rights and remedies as are not provided for  
16 by this chapter.

17 3. No compensation shall be allowed under this chapter for the injury or death due to the  
18 employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted  
19 injury shall be on the employer or the person contesting the claim for allowance.

20 4. Where the injury is caused by the failure of the employer to comply with any statute  
21 in this state or any lawful order of the division or the commission, the compensation and death  
22 benefit provided for under this chapter shall be increased fifteen percent.

23 5. Where the injury is caused by the failure of the employee to use safety devices where  
24 provided by the employer, or from the employee's failure to obey any reasonable rule adopted  
25 by the employer for the safety of employees, the compensation and death benefit provided for  
26 herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is

27 shown that the employee had actual knowledge of the rule so adopted by the employer; and  
28 provided, further, that the employer had, prior to the injury, made a reasonable effort to cause  
29 his or her employees to use the safety device or devices and to obey or follow the rule so adopted  
30 for the safety of the employees.

31         6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
32 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the  
33 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent  
34 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled  
35 drugs.

36         (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the  
37 employer's rule or policy is the proximate cause of the injury, then the benefits or compensation  
38 otherwise payable under this chapter for death or disability shall be forfeited.

39         (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under  
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the  
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A  
42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's  
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section  
44 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter  
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled  
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

47         7. Where the employee's participation in a recreational activity or program is the  
48 prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for  
49 death or disability shall be forfeited regardless that the employer may have promoted, sponsored  
50 or supported the recreational activity or program, expressly or impliedly, in whole or in part. The  
51 forfeiture of benefits or compensation shall not apply when:

52         (1) The employee was directly ordered by the employer to participate in such recreational  
53 activity or program;

54         (2) The employee was paid wages or travel expenses while participating in such  
55 recreational activity or program; or

56         (3) The injury from such recreational activity or program occurs on the employer's  
57 premises due to an unsafe condition and the employer had actual knowledge of the employee's  
58 participation in the recreational activity or program and of the unsafe condition of the premises  
59 and failed to either curtail the recreational activity or program or cure the unsafe condition.

60         8. Mental injury resulting from work-related stress does not arise out of and in the course  
61 of the employment, unless it is demonstrated that the stress is work related and was extraordinary

62 and unusual. The amount of work stress shall be measured by objective standards and actual  
63 events.

64 9. A mental injury is not considered to arise out of and in the course of the employment  
65 if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion,  
66 termination or any similar action taken in good faith by the employer.

67 10. The ability of a firefighter to receive benefits for psychological stress under section  
68 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.140. 1. In addition to all other compensation paid to the employee under this  
2 section, the employee shall receive and the employer shall provide such medical, surgical,  
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as  
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of  
5 the injury. If the employee desires, he shall have the right to select his own physician, surgeon,  
6 or other such requirement at his own expense. Where the requirements are furnished by a public  
7 hospital or other institution, payment therefor shall be made to the proper authorities. Regardless  
8 of whether the health care provider is selected by the employer or is selected by the employee  
9 at the employee's expense, the health care provider shall have the affirmative duty to  
10 communicate fully with the employee regarding the nature of the employee's injury and  
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure  
12 to perform such duty to communicate shall constitute a disciplinary violation by the provider  
13 subject to the provisions of chapter 620. When an employee is required to submit to medical  
14 examinations or necessary medical treatment at a place outside of the local or metropolitan area  
15 from the employee's principal place of employment, the employer or its insurer shall advance or  
16 reimburse the employee for all necessary and reasonable expenses; except that an injured  
17 employee who resides outside the state of Missouri and who is employed by an employer located  
18 in Missouri shall have the option of selecting the location of services provided in this section  
19 either at a location within one hundred miles of the injured employee's residence, place of injury  
20 or place of hire by the employer. The choice of provider within the location selected shall  
21 continue to be made by the employer. In case of a medical examination if a dispute arises as to  
22 what expenses shall be paid by the employer, the matter shall be presented to the legal advisor,  
23 the administrative law judge or the commission, who shall set the sum to be paid and same shall  
24 be paid by the employer prior to the medical examination. In no event, however, shall the  
25 employer or its insurer be required to pay transportation costs for a greater distance than two  
26 hundred fifty miles each way from place of treatment.

27 2. If it be shown to the division or the commission that the requirements are being  
28 furnished in such manner that there is reasonable ground for believing that the life, health, or

29 recovery of the employee is endangered thereby, the division or the commission may order a  
30 change in the physician, surgeon, hospital or other requirement.

31 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject  
32 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation  
33 cases. A health care provider shall not charge a fee for treatment and care which is governed by  
34 the provisions of this chapter greater than the usual and customary fee the provider receives for  
35 the same treatment or service when the payor for such treatment or service is a private individual  
36 or a private health insurance carrier. The division or the commission, or the board of  
37 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all  
38 disputes as to such charges. A health care provider is bound by the determination upon the  
39 reasonableness of health care bills.

40 4. The division shall, by regulation, establish methods to resolve disputes concerning the  
41 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of  
42 disputes between employers and medical providers over fees charged, whether or not paid, and  
43 shall be in lieu of any other administrative procedure under this chapter. The employee shall not  
44 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be  
45 jeopardized because of such dispute. **Any application for payment of additional**  
46 **reimbursement, as such term is used in 8 CSR 50-2.030, as amended, shall be filed no later**  
47 **than:**

48 **(1) Two years from the date the medical services were rendered if such services**  
49 **were rendered before July 1, 2013; and**

50 **(2) One year from the date the medical services were rendered if such services were**  
51 **rendered on or after July 1, 2013.**

52 5. No compensation shall be payable for the death or disability of an employee, if and  
53 insofar as the death or disability may be caused, continued or aggravated by any unreasonable  
54 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the  
55 opinion of the division or the commission, inconsiderable in view of the seriousness of the  
56 injury. If the employee dies as a result of an operation made necessary by the injury, the death  
57 shall be deemed to be caused by the injury.

58 6. The testimony of any physician or chiropractic physician who treated the employee  
59 shall be admissible in evidence in any proceedings for compensation under this chapter, subject  
60 to all of the provisions of section 287.210.

61 7. Every hospital or other person furnishing the employee with medical aid shall permit  
62 its record to be copied by and shall furnish full information to the division or the commission,  
63 the employer, the employee or his dependents and any other party to any proceedings for



64 compensation under this chapter, and certified copies of the records shall be admissible in  
65 evidence in any such proceedings.

66 8. The employer may be required by the division or the commission to furnish an injured  
67 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as  
68 needed, for life whenever the division or the commission shall find that the injured employee  
69 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The  
70 director of the division shall establish a procedure whereby a claim for compensation may be  
71 reactivated after settlement of such claim is completed. The claim shall be reactivated only after  
72 the claimant can show good cause for the reactivation of this claim and the claim shall be made  
73 only for the payment of medical procedures involving life-threatening surgical procedures or if  
74 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,  
75 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation  
76 or condition which, if not treated immediately, will likely result in the death of the injured  
77 worker.

78 9. Nothing in this chapter shall prevent an employee being provided treatment for his  
79 injuries by prayer or spiritual means if the employer does not object to the treatment.

80 10. The employer shall have the right to select the licensed treating physician, surgeon,  
81 chiropractic physician, or other health care provider; provided, however, that such physicians,  
82 surgeons or other health care providers shall offer only those services authorized within the scope  
83 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not  
84 apply.

85 11. Any physician or other health care provider who orders, directs or refers a patient for  
86 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the  
87 time of the referral, disclose in writing if such health care provider, any of his partners or his  
88 employer has a financial interest in the institution or facility to which the patient is being  
89 referred, to the following:

90 (1) The patient;

91 (2) The employer of the patient with workers' compensation liability for the injury or  
92 disease being treated;

93 (3) The workers' compensation insurer of such employer; and

94 (4) The workers' compensation adjusting company for such insurer.

95 12. Violation of subsection 11 of this section is a class A misdemeanor.

96 13. (1) No hospital, physician or other health care provider, other than a hospital,  
97 physician or health care provider selected by the employee at his own expense pursuant to  
98 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for  
99 services rendered to an employee due to a work-related injury or report to any credit reporting

100 agency any failure of the employee to make such payment, when an injury covered by this  
101 chapter has occurred and such hospital, physician or health care provider has received actual  
102 notice given in writing by the employee, the employer or the employer's insurer. Actual notice  
103 shall be deemed received by the hospital, physician or health care provider five days after  
104 mailing by certified mail by the employer or insurer to the hospital, physician or health care  
105 provider.

106 (2) The notice shall include:

107 (a) The name of the employer;

108 (b) The name of the insurer, if known;

109 (c) The name of the employee receiving the services;

110 (d) The general nature of the injury, if known; and

111 (e) Where a claim has been filed, the claim number, if known.

112 (3) When an injury is found to be noncompensable under this chapter, the hospital,  
113 physician or other health care provider shall be entitled to pursue the employee for any unpaid  
114 portion of the fee or other charges for authorized services provided to the employee. Any  
115 applicable statute of limitations for an action for such fees or other charges shall be tolled from  
116 the time notice is given to the division by a hospital, physician or other health care provider  
117 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in  
118 regard to the injury which is the basis of such services is made, or in the event there is an appeal  
119 to the labor and industrial relations commission, until a decision is rendered by that commission.

120 (4) If a hospital, physician or other health care provider or a debt collector on behalf of  
121 such hospital, physician or other health care provider pursues any action to collect from an  
122 employee after such notice is properly given, the employee shall have a cause of action against  
123 the hospital, physician or other health care provider for actual damages sustained plus up to one  
124 thousand dollars in additional damages, costs and reasonable attorney's fees.

125 (5) If an employer or insurer fails to make payment for authorized services provided to  
126 the employee by a hospital, physician or other health care provider pursuant to this chapter, the  
127 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this  
128 section with a dispute against the employer or insurer for any fees or other charges for services  
129 provided.

130 (6) A hospital, physician or other health care provider whose services have been  
131 authorized in advance by the employer or insurer may give notice to the division of any claim  
132 for fees or other charges for services provided for a work-related injury that is covered by this  
133 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where  
134 such notice has been filed, the administrative law judge may order direct payment from the  
135 proceeds of any settlement or award to the hospital, physician or other health care provider for

136 such fees as are determined by the division. The notice shall be on a form prescribed by the  
137 division.

138 14. The employer may allow or require an employee to use any of the employee's  
139 accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment,  
140 physical rehabilitation, or medical evaluations during work time. The intent of this subsection  
141 is to specifically supercede and abrogate any case law that contradicts the express language of  
142 this section.

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

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

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

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

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

35 4. In any case in which an injured employee has been paid benefits from the second injury  
36 fund as provided in subsection 3 of section 287.141, and recovery is had against the third party  
37 liable to the employee for the injury, the second injury fund shall be subrogated to the rights of  
38 the employee against said third party to the extent of the payments made to him from such fund,  
39 subject to provisions of subsections 2 and 3 of this section.

40 5. No construction design professional who is retained to perform professional services  
41 on a construction project or any employee of a construction design professional who is assisting  
42 or representing the construction design professional in the performance of professional services  
43 on the site of the construction project shall be liable for any injury resulting from the employer's  
44 failure to comply with safety standards on a construction project for which compensation is  
45 recoverable under the workers' compensation law, unless responsibility for safety practices is  
46 specifically assumed by contract. The immunity provided by this subsection to any construction  
47 design professional shall not apply to the negligent preparation of design plans or specifications.

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

58 **7. (1) Where a third person is liable to the employee or to the dependents, for the**  
59 **injury to or death of the employee, the attorney general, on behalf of the toxic disease fund**  
60 **established in section 287.213, shall be subrogated to the right of the employee or to the**  
61 **dependents against such third person. Any recovery by the attorney general against the**  
62 **third person shall be apportioned between the attorney general and the employee or the**  
63 **employee's dependents using the provisions of subdivisions 2 and 3 of this subsection.**

64 **(2) When a third person is liable for the death of an employee and compensation**  
65 **is paid or payable under this chapter, and recovery is had by a dependent under this**

66 chapter either by judgment or settlement for the wrongful death of the employee, the  
67 attorney general shall have a subrogation lien on any sums paid pursuant to subdivision  
68 (2) of subsection 4 of section 287.200.

69 (3) Whenever recovery against the third person is effected by the employee or the  
70 employee's dependents, the attorney general shall pay from the attorney general's share  
71 of the recovery a proportionate share of the expenses of the recovery, including a  
72 reasonable attorney fee. After the expenses and attorney fee have been paid, the balance  
73 of the recovery shall be apportioned between the attorney general and the employee or the  
74 employee's dependents in the same ratio that the amount due the attorney general bears  
75 to the total amount recovered if there is no finding of comparative fault on the part of the  
76 employee, or the total damages determined by the trier of fact if there is a finding of  
77 comparative fault on the part of the employee. Notwithstanding the foregoing provision,  
78 the balance of the recovery may be divided between the attorney general and the employee  
79 or the employee's dependents as they may otherwise agree. Any part of the recovery found  
80 to be due to the attorney general, the employee or the employee's dependents shall be paid  
81 forthwith and any part of the recovery paid to the employee or the employee's dependents  
82 under this subsection shall be treated by them as an advance payment by the employer on  
83 account of any future installments of compensation in the following manner:

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

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

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

8 (1) For all injuries occurring on or after September 28, 1983, but before September 28,  
9 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
10 the injured employee's average weekly earnings during the year immediately preceding the  
11 injury, as of the date of the injury; provided that the weekly compensation paid under this

12 subdivision shall not exceed an amount equal to seventy percent of the state average weekly  
13 wage, as such wage is determined by the division of employment security, as of the July first  
14 immediately preceding the date of injury;

15 (2) For all injuries occurring on or after September 28, 1986, but before August 28,  
16 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
17 the injured employee's average weekly earnings during the year immediately preceding the  
18 injury, as of the date of the injury; provided that the weekly compensation paid under this  
19 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly  
20 wage, as such wage is determined by the division of employment security, as of the July first  
21 immediately preceding the date of injury;

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

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

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

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

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

48 review the case and either the employee or the employer may request an informal conference  
49 with the commission relative to the resumption of the employee's weekly life payment in the  
50 case.

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

54 **(1) Such amount as due to the employee during said employee's life as provided for**  
55 **under this chapter for an award of permanent total disability and death; and**

56 **(2) An amount equal to two hundred percent of the state's average weekly wage as**  
57 **of the date of diagnosis for one hundred weeks shall be paid by the employer as set forth**  
58 **in section 287.213. The employer may seek contribution from the toxic disease fund in an**  
59 **amount equal to fifty percent of the paid amount. The amount paid by the employer shall**  
60 **be provided as a one-time lump sum award, calculated as of the date the award is issued;**  
61 **and**

62 **(3) In cases where occupational diseases due to toxic exposure are found to be**  
63 **mesothelioma, an additional amount of three hundred percent of the state's average weekly**  
64 **wage for one hundred ninety-one weeks shall be paid by the employer as set forth in**  
65 **section 287.213. The employer may seek contribution from the toxic disease fund in an**  
66 **amount equal to fifty percent of the paid amount. The amount paid by the employer shall**  
67 **be provided as a one-time lump sum award, calculated as of the date the award is issued;**  
68 **and**

69 **(4) The provisions of subdivisions 2 and 3 of this subsection shall not be subject to**  
70 **suspension of benefits as provided in subsection 3 of this section; and**

71 **(5) Notwithstanding any other provision of this chapter to the contrary, should the**  
72 **employee die before the additional benefits provided for in subdivisions 2 and 3 of this**  
73 **subsection are paid, the additional benefits are payable to the employee's spouse or**  
74 **children, natural or adopted, legitimate or illegitimate, in addition to benefits provided**  
75 **under section 287.240. If there is no surviving spouse or children such additional benefits**  
76 **shall be paid as a single payment to the estate of the employee.**

287.210. 1. After an employee has received an injury he shall from time to time  
2 thereafter during disability submit to a reasonable medical examination at the request of the  
3 employer, [his] the employer's insurer, the commission, the division or an administrative law  
4 judge[,] . **Additionally, if the employer has not obtained a medical examination report, the**  
5 **attorney general can request the medical examination be conducted and receive such**  
6 **report on behalf of the second injury fund.** The time and place of any such examination  
7 which shall be fixed with due regard to the convenience of the employee and his physical

8 condition and ability to attend. The employee may have his own physician present, and if the  
9 employee refuses to submit to the examination, or in any way obstructs it, his right to  
10 compensation shall be forfeited during such period unless in the opinion of the commission the  
11 circumstances justify the refusal or obstruction.

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

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

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

38 5. As used in this chapter the terms "physician's report" and "medical report" mean the  
39 report of any physician made on any printed form authorized by the division or the commission  
40 or any complete medical report. As used in this chapter the term "complete medical report"  
41 means the report of a physician giving the physician's qualifications and the patient's history,  
42 complaints, details of the findings of any and all laboratory, X-ray and all other technical  
43 examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage



44 of permanent partial disability, if any. An element or elements of a complete medical report may  
45 be met by the physician's records.

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

51 7. The testimony of a treating or examining physician may be submitted in evidence on  
52 the issues in controversy by a complete medical report and shall be admissible without other  
53 foundational evidence subject to compliance with the following procedures. The party intending  
54 to submit a complete medical report in evidence shall give notice at least sixty days prior to the  
55 hearing to all parties and shall provide reasonable opportunity to all parties to obtain  
56 cross-examination testimony of the physician by deposition. The notice shall include a copy of  
57 the report and all the clinical and treatment records of the physician including copies of all  
58 records and reports received by the physician from other health care providers. The party  
59 offering the report must make the physician available for cross-examination testimony by  
60 deposition not later than seven days before the matter is set for hearing, and each cross-examiner  
61 shall compensate the physician for the portion of testimony obtained in an amount not to exceed  
62 a rate of reasonable compensation taking into consideration the specialty practiced by the  
63 physician. Cross-examination testimony shall not bind the cross-examining party. Any  
64 testimony obtained by the offering party shall be at that party's expense on a proportional basis,  
65 including the deposition fee of the physician. Upon request of any party, the party offering a  
66 complete medical report in evidence must also make available copies of X rays or other  
67 diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of  
68 such notice a party shall dispute whether a report meets the requirements of a complete medical  
69 report by providing written objections to the offering party stating the grounds for the dispute,  
70 and at the request of any party, the administrative law judge shall rule upon such objections upon  
71 pretrial hearing whether the report meets the requirements of a complete medical report and upon  
72 the admissibility of the report or portions thereof. If no objections are filed the report is  
73 admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the  
74 parties from agreeing to admit medical reports or records by consent. [The provisions of this  
75 subsection shall not apply to claims against the second injury fund.]

76 8. Certified copies of the proceedings before any coroner holding an inquest over the  
77 body of any employee receiving an injury in the course of his employment resulting in death shall  
78 be admissible in evidence in any proceedings for compensation under this chapter, and it shall

79 be the duty of the coroner to give notice of the inquest to the employer and the dependents of the  
80 deceased employee, who shall have the right to cross-examine the witness.

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

**287.213. 1. There is hereby created in the state treasury a special fund to be known  
2 as the "Toxic Disease Fund" created exclusively for the purposes set forth in this section  
3 for employers that have fifteen or more employees. Such fund shall be used solely for  
4 payment of awards issued pursuant to subdivisions (2) and (3) of subsection 4 of section  
5 287.200. The state treasurer shall be the custodian of the toxic disease fund which shall be  
6 deposited the same as are state funds and any interest accruing thereon shall be added  
7 thereto. The fund shall be subject to audit the same as are state funds and accounts and  
8 shall be protected by the general bond given by the state treasurer. Upon the requisition  
9 of the director of the division of workers' compensation, warrants on the state treasurer  
10 for the payment of all amounts payable for compensation and benefits out of the terminal  
11 disease fund shall be issued.**

12 **2. Beginning July 1, 2013, and each calendar year thereafter, the director of the  
13 division of workers' compensation shall estimate the amount of benefits payable from the  
14 toxic disease fund relating to awards issued pursuant to subdivisions (2) and (3) of  
15 subsection 4 of section 287.200 during the following calendar year and shall calculate the  
16 total amount of the toxic disease fund surcharge to be imposed during the following  
17 calendar year upon all workers' compensation policyholders and authorized self-insurers  
18 with fifteen or more employees. Such surcharge shall be set by the director based on the  
19 average number of awards for such diseases in the three years preceding the year in which  
20 such rates are set, multiplied by the benefit allowed in subdivisions (2) and (3) of subsection  
21 4 of section 287.200. In addition, the surcharge shall be increased in an amount to collect  
22 a cash reserve of up to fifty percent of the yearly surcharge established in this section, until  
23 such time that a one year reserve has been accumulated. All revenue collected under this  
24 section shall be deposited in the account established in this section and such revenue shall  
25 only be used to satisfy awards issued pursuant to subdivisions (2) and (3) of subsection 4  
26 of section 287.200. All policyholders and self-insurers with fifteen or more employees shall  
27 be notified by the division of workers' compensation of the toxic exposure supplemental  
28 surcharge percent to be imposed for such period of time as part of the notice provided in  
29 subsections 2 and 6 of section 287.715. The amount of the annual surcharge percentage to  
30 be imposed upon each policyholder and self-insurer for the third and fourth quarter of  
31 calendar year 2013 and for each calendar year thereafter, shall be set at and calculated  
32 against a percentage, not to exceed one-half of one percent, of the policyholder's and self-**

33 **insured workers' compensation net deposits, net premiums, or net assessments for the**  
34 **previous policy year, rounded up to the nearest hundredth of a percentage point.**

35 **3. Funds collected under the provisions of this chapter shall be the sole funding**  
36 **source of the toxic disease fund.**

37 **4. The division shall pay requests for contribution in the order such awards are**  
38 **issued.**

39 **5. In order for an employee to qualify for an award issued pursuant to subdivision**  
40 **(2) and (3) of subsection 4 of section 287.200, such employee must allege in the claim for**  
41 **compensation a disease listed in subsection 11 of section 287.020 and provide notice to the**  
42 **attorney general of such allegations.**

43 **6. The attorney general shall represent the toxic disease fund and shall safeguard**  
44 **its revenues for the purposes of this section. The attorney general must be a signatory to**  
45 **any settlement that allows access to the toxic disease fund.**

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

12 **2. All claims against the second injury fund for injuries occurring prior to the**  
13 **effective date of this section shall be compensated as provided in this subsection. All cases**  
14 **of permanent disability where there has been previous disability shall be compensated as herein**  
15 **provided. Compensation shall be computed on the basis of the average earnings at the time of**  
16 **the last injury. If any employee who has a preexisting permanent partial disability whether from**  
17 **compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to**  
18 **employment or to obtaining reemployment if the employee becomes unemployed, and the**  
19 **preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty**  
20 **weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent**  
21 **permanent partial disability, according to the medical standards that are used in determining such**  
22 **compensation, receives a subsequent compensable injury resulting in additional permanent**  
23 **partial disability so that the degree or percentage of disability, in an amount equal to a minimum**

24 of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only,  
25 equals a minimum of fifteen percent permanent partial disability, caused by the combined  
26 disabilities is substantially greater than that which would have resulted from the last injury,  
27 considered alone and of itself, and if the employee is entitled to receive compensation on the  
28 basis of the combined disabilities, the employer at the time of the last injury shall be liable only  
29 for the degree or percentage of disability which would have resulted from the last injury had  
30 there been no preexisting disability. After the compensation liability of the employer for the last  
31 injury, considered alone, has been determined by an administrative law judge or the commission,  
32 the degree or percentage of employee's disability that is attributable to all injuries or conditions  
33 existing at the time the last injury was sustained shall then be determined by that administrative  
34 law judge or by the commission and the degree or percentage of disability which existed prior  
35 to the last injury plus the disability resulting from the last injury, if any, considered alone, shall  
36 be deducted from the combined disability, and compensation for the balance, if any, shall be paid  
37 out of a special fund known as the second injury fund, hereinafter provided for. If the previous  
38 disability or disabilities, whether from compensable injury or otherwise, and the last injury  
39 together result in total and permanent disability, the minimum standards under this subsection  
40 for a body as a whole injury or a major extremity injury shall not apply and the employer at the  
41 time of the last injury shall be liable only for the disability resulting from the last injury  
42 considered alone and of itself; except that if the compensation for which the employer at the time  
43 of the last injury is liable is less than the compensation provided in this chapter for permanent  
44 total disability, then in addition to the compensation for which the employer is liable and after  
45 the completion of payment of the compensation by the employer, the employee shall be paid the  
46 remainder of the compensation that would be due for permanent total disability under section  
47 287.200 out of [a special fund known as the "Second Injury Fund" hereby created exclusively  
48 for the purposes as in this section provided and for special weekly benefits in rehabilitation cases  
49 as provided in section 287.141. Maintenance of the second injury fund shall be as provided by  
50 section 287.710. The state treasurer shall be the custodian of the second injury fund which shall  
51 be deposited the same as are state funds and any interest accruing thereon shall be added thereto.  
52 The fund shall be subject to audit the same as state funds and accounts and shall be protected by  
53 the general bond given by the state treasurer. Upon the requisition of the director of the division  
54 of workers' compensation, warrants on the state treasurer for the payment of all amounts payable  
55 for compensation and benefits out of the second injury fund shall be issued.

56 **2.] the second injury fund.**

57 **3. All claims against the second injury fund for injuries occurring after the effective**  
58 **date of this section and all claims against the second injury fund involving a subsequent**

59 **compensable injury which is an occupational disease filed after the effective date of this**  
60 **section shall be compensated as provided in this subsection.**

61 **(1) No claims for permanent partial disability occurring after the effective date of**  
62 **this section shall be filed against the second injury fund. Claims for permanent total**  
63 **disability under section 287.200 against the second injury fund shall be compensable only**  
64 **when the following conditions are met:**

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

68 **a. A direct result of active military duty in any branch of the United States armed**  
69 **forces; or**

70 **b. A direct result of a compensable injury as defined in section 287.020; or**

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

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

79 **(b) Such employee thereafter sustains a subsequent compensable work-related**  
80 **injury that, when combined with the preexisting disability, as set forth in subparagraphs**  
81 **a, b, c, or d of paragraph (a) of this subdivision, results in a permanent total disability as**  
82 **defined under this chapter.**

83 **(2) When an employee is entitled to compensation as provided in this subsection,**  
84 **the employer at the time of the last work-related injury shall only be liable for the**  
85 **disability resulting from the subsequent work-related injury considered alone and of itself.**

86 **(3) Compensation for benefits payable under this subsection shall be based on the**  
87 **employee's compensation rate calculated under section 287.250.**

88 **4. In all cases in which a recovery against the second injury fund is sought for permanent**  
89 **partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall**  
90 **be named as a party, and shall be entitled to defend against the claim.**

91 **(1) The state treasurer, with the advice and consent of the attorney general of Missouri,**  
92 **may enter into agreed statements of fact that would affect the second injury fund or**  
93 **compromise settlements as contemplated by section 287.390[, or agreed statements of fact that**  
94 **would affect the second injury fund. All awards for permanent partial disability, permanent total**

95 disability, or death affecting the second injury fund shall be subject to the provisions of this  
96 chapter governing review and appeal] **with the following limitations:**

97 **(a) For all claims filed prior to the effective date of this section, with the exception**  
98 **of permanent total disability claims, such settlement may be made in any amount not to**  
99 **exceed sixty thousand dollars; or**

100 **(b) For all permanent total disability claims, such settlement may be made in any**  
101 **amount not to exceed the sum of two hundred times the employee's permanent total**  
102 **disability rate as of the date of the injury.**

103 **(2) Notwithstanding subdivision (1) of this subsection to the contrary, the state**  
104 **treasurer, with the advice and consent of the attorney general, may enter into compromise**  
105 **settlements as contemplated by section 287.390 in any amount.**

106 **(3) The state treasurer, with the advice and consent of the attorney general, may**  
107 **enter into compromise settlements with dependents of claimants, whether finally**  
108 **adjudicated or not, arising from the Missouri supreme court's decision in Schoemehl v.**  
109 **Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007).**

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

120 **[3.] 5. If more than one injury in the same employment causes concurrent temporary**  
121 **disabilities, compensation shall be payable only for the longest and largest paying disability.**

122 **[4.] 6. If more than one injury in the same employment causes concurrent and**  
123 **consecutive permanent partial disability, compensation payments for each subsequent disability**  
124 **shall not begin until the end of the compensation period of the prior disability.**

125 **[5.] 7. If an employer fails to insure or self-insure as required in section 287.280, funds**  
126 **from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary**  
127 **expenses **incurred relating to claims for injuries occurring prior to the effective date of this****  
128 **section, to cure and relieve the effects of the injury or disability of an injured employee in the**  
129 **employ of an uninsured employer **consistent with subsection 3 of section 287.140,** or in the**  
130 **case of death of an employee in the employ of an uninsured employer, funds from the second**

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

142 [6.] **8.** Every [three years] **year** the second injury fund shall have an actuarial study  
143 made to determine the solvency of the fund **taking into consideration any existing balance**  
144 **carried forward from a previous year**, appropriate funding level of the fund, and forecasted  
145 expenditures from the fund. The first actuarial study shall be completed prior to July 1, [1988]  
146 **2014**. The expenses of such actuarial studies shall be paid out of the fund for the support of the  
147 division of workers' compensation.

148 [7.] **9.** The director of the division of workers' compensation shall maintain the financial  
149 data and records concerning the fund for the support of the division of workers' compensation  
150 and the second injury fund. The division shall also compile and report data on claims made  
151 pursuant to subsection 9 of this section. The attorney general shall provide all necessary  
152 information to the division for this purpose.

153 [8.] **10.** All claims for fees and expenses filed against the second injury fund and all  
154 records pertaining thereto shall be open to the public.

155 [9.] **11.** Any employee who, at the time a compensable work-related injury is sustained  
156 **prior to the effective date of this section** is employed by more than one employer, the employer  
157 for whom the employee was working when the injury was sustained shall be responsible for  
158 wage loss benefits applicable only to the earnings in that employer's employment and the injured  
159 employee shall be entitled to file a claim against the second injury fund for any additional wage  
160 loss benefits attributed to loss of earnings from the employment or employments where the injury  
161 did not occur, up to the maximum weekly benefit less those benefits paid by the employer in  
162 whose employment the employee sustained the injury. The employee shall be entitled to a total  
163 benefit based on the total average weekly wage of such employee computed according to  
164 subsection 8 of section 287.250. The employee shall not be entitled to a greater rate of  
165 compensation than allowed by law on the date of the injury. The employer for whom the

166 employee was working where the injury was sustained shall be responsible for all medical costs  
167 incurred in regard to that injury.

168 **12. No compensation shall be payable from the second injury fund if the employee**  
169 **elects to pursue compensation under the workers' compensation law of another state with**  
170 **jurisdiction over the employee's injury or accident or occupational disease.**

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

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

178 **15. The division shall pay any liabilities of the fund in the following priority:**

179 **(1) Expenses related to the legal defense of the fund under subsection 4 of this**  
180 **section;**

181 **(2) Permanent total disability awards in the order in which claims are settled or**  
182 **finally adjudicated;**

183 **(3) Permanent partial disability awards in the order in which such claims are**  
184 **settled or finally adjudicated;**

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

187 **(5) Interest on unpaid awards.**

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

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

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



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

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

21           4. The administrative law judge review committee members shall not have any direct or  
22 indirect employment or financial connection with a workers' compensation insurance company,  
23 claims adjustment company, health care provider nor be a practicing workers' compensation  
24 attorney. All members of the committee shall have a working knowledge of workers'  
25 compensation.

26           5. The committee shall within thirty days of completing each performance audit make  
27 a recommendation of confidence or no confidence for each administrative law judge.

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

45 the same manner as provided elsewhere in this chapter for awards by the labor and industrial  
46 relations commission, and shall be subject to review as provided by section 287.480.

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

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

57 9. (1) The director of the division, in conjunction with The administrative law judge  
58 review committee, shall conduct a performance audit of all administrative law judges every two  
59 years. The audit results, stating the committee's recommendation of confidence or no confidence  
60 of each administrative law judge shall be sent to the governor no later than the first week of each  
61 legislative session immediately following such audit. Any administrative law judge who has  
62 received [two] **three** or more votes of no confidence under **two successive** performance audits  
63 by the committee may have their appointment immediately withdrawn.

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

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

287.690. [1.] Prior to December 31, 1993, for the purpose of providing for the expense  
2 of administering this chapter [and for the purpose set out in subsection 2 of this section], every  
3 person, partnership, association, corporation, whether organized under the laws of this or any

4 other state or country, the state of Missouri, including any of its departments, divisions, agencies,  
5 commissions, and boards or any political subdivisions of the state who self-insure or hold  
6 themselves out to be any part self-insured, company, mutual company, the parties to any  
7 interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring  
8 employers in this state against liability for personal injuries to their employees, or for death  
9 caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net  
10 deposits, net premiums or net assessments received, whether in cash or notes in this state, or on  
11 account of business done in this state, for such insurance in this state at the rate of two percent  
12 in lieu of all [other] **premium** taxes on such net deposits, net premiums or net assessments,  
13 which amount of taxes shall be assessed and collected as herein provided. Beginning October  
14 31, 1993, and every year thereafter, the director of the division of workers' compensation shall  
15 estimate the amount of revenue required to administer this chapter and the **division** director shall  
16 determine the rate of tax to be paid in the following calendar year pursuant to this section  
17 commencing with the calendar year beginning on January 1, 1994. If the balance of the fund  
18 [estimated to be] on hand on [December thirty-first] **July first** of the year each tax rate  
19 determination is made **on October thirty-first** is less than one hundred ten percent of the  
20 previous year's expenses plus any additional revenue required due to new statutory requirements  
21 given to the division by the general assembly, then the **division** director shall impose a tax not  
22 to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments,  
23 rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed  
24 and collected as herein provided. The net premium equivalent for individual self-insured  
25 employers and any group of political subdivisions of this state qualified to self-insure their  
26 liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate  
27 classifications calculated by the department of insurance, financial institutions and professional  
28 registration as taken from premium rates filed by the twenty insurance companies providing the  
29 greatest volume of workers' compensation insurance coverage in this state. For employers  
30 qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of  
31 employers in accordance with subsection 2 of section 287.280 shall be the net premium  
32 equivalent. Every entity required to pay the tax imposed pursuant to this section and section  
33 287.730 shall be notified by the division of workers' compensation within ten calendar days of  
34 the date of the determination of the rate of tax to be imposed for the following year. Net  
35 premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross  
36 assessments less canceled or returned premiums, premium deposits or assessments and less  
37 dividends or savings, actually paid or credited.

38 [2. After January 1, 1994, the director of the division shall make one or more loans to  
39 the Missouri employers mutual insurance company in an amount not to exceed an aggregate

40 amount of five million dollars from the fund maintained to administer this chapter for start-up  
41 funding and initial capitalization of the company. The board of the company shall make  
42 application to the director for the loans, stating the amount to be loaned to the company. The  
43 loans shall be for a term of five years and, at the time the application for such loans is approved  
44 by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as  
45 calculated by the state treasurer pursuant to section 30.758.]

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

11 2. Beginning October 31, 2005, and each year thereafter, the director of the division of  
12 workers' compensation shall estimate the amount of benefits payable from the second injury fund  
13 during the following calendar year and shall calculate the total amount of the annual surcharge  
14 to be imposed during the following calendar year upon all workers' compensation policyholders  
15 and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon  
16 each policyholder and self-insured for the following calendar year commencing with the calendar  
17 year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to  
18 exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits,  
19 net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half  
20 of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the  
21 moneys to be paid from the second injury fund in the following calendar year, less any moneys  
22 contained in the fund at the end of the previous calendar year. All policyholders and self-insurers  
23 shall be notified by the division of workers' compensation within ten calendar days of the  
24 determination of the surcharge percent to be imposed for, and paid in, the following calendar  
25 year. The net premium equivalent for individual self-insured employers and any group of  
26 political subdivisions of this state qualified to self-insure their liability pursuant to this chapter  
27 as authorized by section 537.620 shall be based on average rate classifications calculated by the  
28 department of insurance, financial institutions and professional registration as taken from  
29 premium rates filed by the twenty insurance companies providing the greatest volume of workers'  
30 compensation insurance coverage in this state. For employers qualified to self-insure their

31 liability pursuant to this chapter, the rates filed by such group of employers in accordance with  
32 subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance  
33 funds from the workers' compensation fund to the second injury fund if surcharge collections  
34 prove to be insufficient. Any funds advanced from the workers' compensation fund to the second  
35 injury fund must be reimbursed by the second injury fund no later than December thirty-first of  
36 the year following the advance. The surcharge shall be collected from policyholders by each  
37 insurer at the same time and in the same manner that the premium is collected, but no insurer or  
38 its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection.  
39 The surcharge is not subject to any taxes, licenses or fees.

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

42         4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and  
43 insurers shall pay the amounts not later than the thirtieth day of the month following the end of  
44 the quarter in which the amount is received from policyholders. If the director of the division  
45 of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any  
46 year for the following year, any increase in the surcharge ultimately set by the director shall not  
47 be effective for any calendar quarter beginning less than sixty days from the date the director  
48 makes such determination.

49         5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer  
50 fails to make timely transfer to the division of surcharges actually collected from policyholders,  
51 as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or  
52 untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties  
53 assessed under this subsection shall be collected in a civil action by a summary proceeding  
54 brought by the director of the division of workers' compensation.

55         **6. In order to maintain the fiscal solvency of the second injury fund, should the**  
56 **anticipated collections authorized in subsection 2 of this section fail to be sufficient to meet**  
57 **its current and anticipated legal obligations, provide funds to settle cases and provide**  
58 **funds for the administration of the fund for the third and fourth quarter of calendar year**  
59 **2013 and for calendar years 2014, 2015, 2016, 2017, 2018, 2019, and 2020, the director of**  
60 **the division of workers' compensation shall determine the amount of revenue so required.**  
61 **Notwithstanding subsection 2 of this section to the contrary, such necessary funds as**  
62 **determined by the director of the division of workers' compensation shall be collected with**  
63 **a supplemental surcharge not to exceed one and one-half percent for the calendar year**  
64 **2013 and not to exceed three percent for the remaining calendar years through 2020. All**  
65 **policyholders and self-insurers shall be notified by the division of workers' compensation**  
66 **of the supplemental surcharge percent to be imposed for such period of time as part of the**

67 **notice provided in subsection 2 of this section, except for the supplemental surcharge**  
68 **percent for the third and fourth quarters of calendar year 2013 for which notice shall be**  
69 **provided within ten calendar days of the determination of the supplemental surcharge to**  
70 **be imposed for those quarters. The provisions of this subsection shall expire on December**  
71 **31, 2020.**

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715 are not paid  
2 when due, the taxpayer shall be required to pay, as part of such tax, interest thereon at the rate  
3 of one and one-half percent per month for each month or fraction thereof delinquent. In the  
4 event the state prevails in any dispute concerning an assessment of tax which has not been paid  
5 by the taxpayer, interest shall be paid upon the amount found due to the state at the rate of one  
6 and one-half percent per month for each month or fraction thereof delinquent.

7 2. In any legal contest concerning the amount of tax under sections 287.690, 287.710 and  
8 287.715 for a calendar year, the quarterly installments for the following year shall continue to  
9 be made based upon the amount assessed by the director of revenue for the year in question. If  
10 after the end of any taxable year, the amount of the actual tax due is less than the total amount  
11 of the installments actually paid, the amount by which the amount paid exceeds the amount due  
12 shall **at the election of the taxpayer be refunded or** credited against the tax for the following  
13 year and, **in the event of a credit**, deducted from the quarterly installment otherwise due on June  
14 first.

287.955. 1. Every workers' compensation insurer shall adhere to a uniform classification  
2 system and uniform experience rating plan filed with the director by the advisory organization  
3 designated by the director and subject to his disapproval. **An insurer has the option of**  
4 **submitting rating methodologies that further refine the uniform rating process and are**  
5 **supplemental to and do not replace the approved uniform classification and experience**  
6 **rating plan.** An insurer may develop subclassifications of the uniform classification system **any**  
7 **may develop other rating mechanisms to account for the use of other factors** upon which  
8 a rate may be made, except that such subclassifications **and other rating mechanisms** shall be  
9 filed with the director thirty days prior to their use. The director shall disapprove  
10 subclassifications **and other rating mechanisms** if the insurer fails to demonstrate that the data  
11 thereby produced can be reported consistent with the uniform statistical plan and classification  
12 system. **Nothing in this subsection shall be interpreted to eliminate the requirement of**  
13 **insurers to apply the uniform classification system or uniform experience rating plan in**  
14 **the insurers rate making.**

15 2. The director shall designate an advisory organization to assist him in gathering,  
16 compiling and reporting relevant statistical information. Every workers' compensation insurer

17 shall record and report its workers' compensation experience to the designated advisory  
18 organization as set forth in the uniform statistical plan approved by the director.

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

287.957. The experience rating plan shall contain reasonable eligibility standards,  
2 provide adequate incentives for loss prevention, and shall provide for sufficient premium  
3 differentials so as to encourage safety. The uniform experience rating plan shall [be the  
4 exclusive means of providing] **form the basis of any** prospective premium adjustment based  
5 upon measurement of the loss-producing characteristics of an individual insured. **An insurer**  
6 **has the option of submitting rating methodologies that further refine the uniform rating**  
7 **process except that such other rating mechanisms shall be filed with the director thirty**  
8 **days prior to their use.** An insurer may submit a rating plan or plans providing for retrospective  
9 premium adjustments based upon an insured's past experience. Such system shall provide for  
10 retrospective adjustment of an experience modification and premiums paid pursuant to such  
11 experience modification where a prior reserved claim produced an experience modification that  
12 varied by greater than fifty percent from the experience modification that would have been  
13 established based on the settlement amount of that claim. The rating plan shall prohibit an  
14 adjustment to the experience modification of an employer if the total medical cost does not  
15 exceed one thousand dollars and the employer pays all of the total medical costs and there is no  
16 lost time from the employment, other than the first three days or less of disability under  
17 subsection 1 of section 287.160, and no claim is filed. An employer opting to utilize this  
18 provision maintains an obligation to report the injury under subsection 1 of section 287.380.

Section B. Because it is necessary to ensure the solvency of the second injury fund, the  
2 repeal and reenactment of sections 287.220 and 287.715 of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace and safety, and is hereby declared  
4 to be an emergency act within the meaning of the constitution, and the repeal and reenactment  
5 of sections 287.220 and 287.715 of this act shall be in full force and effect upon its passage and  
6 approval.

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