

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 522
95TH GENERAL ASSEMBLY

0760L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.120, 287.200, 287.220, 287.260, 287.690, and 287.715, RSMo, and to enact in lieu thereof nine new sections relating to workers' compensation law.

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

Section A. Sections 287.120, 287.200, 287.220, 287.260, 287.690, and 287.715, RSMo,
2 are repealed and nine new sections enacted in lieu thereof, to be known as sections 287.120,
3 287.200, 287.201, 287.220, 287.226, 287.260, 287.315, 287.690, and 287.715, to read as
4 follows:

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 arising out of and in the course of the
4 employee's employment, and shall be released from all other liability therefor whatsoever,
5 whether to the employee or any other person. The term "accident" as used in this section shall
6 include, but not be limited to, injury or death of the employee caused by the unprovoked violence
7 or assault against the employee by any person.

8 2. The rights and remedies herein granted to an employee shall exclude all other rights
9 and remedies of the employee, his wife, her husband, parents, personal representatives,
10 dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury
11 or death, except such rights and remedies as are not provided for by this chapter.

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

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.

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

18 5. Where the injury is caused by the failure of the employee to use safety devices where
19 provided by the employer, or from the employee's failure to obey any reasonable rule adopted
20 by the employer for the safety of employees, the compensation and death benefit provided for
21 herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is
22 shown that the employee had actual knowledge of the rule so adopted by the employer; and
23 provided, further, that the employer had, prior to the injury, made a reasonable effort to cause
24 his or her employees to use the safety device or devices and to obey or follow the rule so adopted
25 for the safety of the employees.

26 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
27 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the
28 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent
29 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled
30 drugs.

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

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

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

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

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

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

56 8. Mental injury resulting from work-related stress does not arise out of and in the course
57 of the employment, unless it is demonstrated that the stress is work related and was extraordinary
58 and unusual. The amount of work stress shall be measured by objective standards and actual
59 events.

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

63 10. The ability of a firefighter to receive benefits for psychological stress under section
64 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

65 **11. If an employee who is receiving compensation under this chapter becomes**
66 **incarcerated, such compensation shall be suspended.**

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.]

**287.201. To be eligible to receive compensation under this chapter, an employee
2 shall be able to legally work in the United States.**

**287.220. 1. Beginning August 28, 2009, no claim for permanent partial disability
2 except as provided in subsection 6 of this section shall be made against the second injury
3 fund established under this section.**

4 **2. Prior to August 28, 2009**, all cases of permanent disability where [there has been
5 previous disability shall be compensated as herein provided] **a claim has been filed against the**
6 **second injury fund under section 287.430 and a determination of disability certified by a**
7 **physician based upon objective medical findings has been made shall be compensated as**
8 **provided in subsections 2 to 9 of this section.** Compensation shall be computed on the basis
9 of the average earnings at the time of the last injury. If any employee who has a preexisting
10 permanent partial disability whether from compensable injury or otherwise, of such seriousness
11 as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the
12 employee becomes unemployed, and the preexisting permanent partial disability, if a body as a
13 whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury
14 only, equals a minimum of fifteen percent permanent partial disability, according to the medical
15 standards that are used in determining such compensation, receives a subsequent compensable
16 injury resulting in additional permanent partial disability so that the degree or percentage of
17 disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole
18 injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial
19 disability, caused by the combined disabilities is substantially greater than that which would have
20 resulted from the last injury, considered alone and of itself, and if the employee is entitled to
21 receive compensation on the basis of the combined disabilities, the employer at the time of the
22 last injury shall be liable only for the degree or percentage of disability which would have
23 resulted from the last injury had there been no preexisting disability. After the compensation
24 liability of the employer for the last injury, considered alone, has been determined by an
25 administrative law judge or the commission, the degree or percentage of employee's disability
26 that is attributable to all injuries or conditions existing at the time the last injury was sustained
27 shall then be determined by that administrative law judge or by the commission and the degree
28 or percentage of disability which existed prior to the last injury plus the disability resulting from
29 the last injury, if any, considered alone, shall be deducted from the combined disability, and
30 compensation for the balance, if any, shall be paid out of a special fund known as the second
31 injury fund, hereinafter provided for. If the previous disability or disabilities, whether from
32 compensable injury or otherwise, and the last injury together result in total and permanent
33 disability, the minimum standards under this subsection for a body as a whole injury or a major
34 extremity injury shall not apply and the employer at the time of the last injury shall be liable only
35 for the disability resulting from the last injury considered alone and of itself; except that if the
36 compensation for which the employer at the time of the last injury is liable is less than the
37 compensation provided in this chapter for permanent total disability, then in addition to the
38 compensation for which the employer is liable and after the completion of payment of the
39 compensation by the employer, the employee shall be paid the remainder of the compensation

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

50 [2.] 3. In all cases in which a recovery against the second injury fund is sought for
51 permanent partial disability, permanent total disability, or death, the state treasurer as custodian
52 thereof shall be named as a party, and shall be entitled to defend against the claim. The state
53 treasurer, with the advice and consent of the attorney general of Missouri, may enter into
54 compromise settlements as contemplated by section 287.390, or agreed statements of fact that
55 would affect the second injury fund. **However, beginning August 28, 2009, there shall be no**
56 **compromise settlements contemplated by section 287.390 paid from the second injury fund**
57 **in an amount greater than forty thousand dollars.** All awards for permanent partial disability,
58 permanent total disability, or death affecting the second injury fund shall be subject to the
59 provisions of this chapter governing review and appeal. For all claims filed against the second
60 injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general
61 except in circumstances where an actual or potential conflict of interest exists, to provide legal
62 services as may be required in all claims made for recovery against the fund. Any legal expenses
63 incurred by the attorney general's office in the handling of such claims, including, but not limited
64 to, medical examination fees, expert witness fees, court reporter expenses, travel costs, and
65 related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such
66 legal expenses shall be contingent upon annual appropriations made by the general assembly,
67 from the fund, to the attorney general's office for this specific purpose.

68 [3.] 4. If more than one injury in the same employment causes concurrent temporary
69 disabilities, compensation shall be payable only for the longest and largest paying disability.

70 [4.] 5. If more than one injury in the same employment causes concurrent and
71 consecutive permanent partial disability, compensation payments for each subsequent disability
72 shall not begin until the end of the compensation period of the prior disability.

73 [5.] 6. If an employer fails to insure or self-insure as required in section 287.280, funds
74 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
75 expenses to cure and relieve the effects of the injury or disability of an injured employee in the

76 employ of an uninsured employer, or in the case of death of an employee in the employ of an
77 uninsured employer, funds from the second injury fund may be withdrawn to cover fair,
78 reasonable, and necessary expenses in the manner required in sections 287.240 and 287.241. In
79 defense of claims arising under this subsection, the treasurer of the state of Missouri, as
80 custodian of the second injury fund, shall have the same defenses to such claims as would the
81 uninsured employer **and shall have the right to dispute the reasonableness of the medical**
82 **charges or fees based upon an audit of the medical bills. The treasurer of the state of**
83 **Missouri shall be permitted to present any evidence with respect to the audit findings on**
84 **the medical charges.** Any funds received by the employee or the employee's dependents,
85 through civil or other action, must go towards reimbursement of the second injury fund, for all
86 payments made to the employee, the employee's dependents, or paid on the employee's behalf,
87 from the second injury fund pursuant to this subsection. The office of the attorney general of the
88 state of Missouri shall bring suit in the circuit court of the county in which the accident occurred
89 against any employer not covered by this chapter as required in section 287.280.

90 [6. Every three years] **7. Annually** the second injury fund shall have an actuarial study
91 made to determine the solvency of the fund, appropriate funding level of the fund, and forecasted
92 expenditures from the fund. The first actuarial study shall be completed prior to [July 1, 1988]
93 **July 1, 2010.** The expenses of such actuarial studies shall be paid out of the fund for the support
94 of the division of workers' compensation.

95 [7.] **8.** The director of the division of workers' compensation shall maintain the financial
96 data and records concerning the fund for the support of the division of workers' compensation
97 and the second injury fund. The division shall also compile and report data on claims made
98 pursuant to subsection 9 of this section. The attorney general shall provide all necessary
99 information to the division for this purpose.

100 [8.] **9.** All claims for fees and expenses filed against the second injury fund and all
101 records pertaining thereto shall be open to the public.

102 [9.] **10.** Any employee who at the time a compensable work-related injury is sustained
103 is employed by more than one employer, the employer for whom the employee was working
104 when the injury was sustained shall be responsible for wage loss benefits applicable only to the
105 earnings in that employer's employment and the injured employee shall be entitled to file a claim
106 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
107 from the employment or employments where the injury did not occur, up to the maximum
108 weekly benefit less those benefits paid by the employer in whose employment the employee
109 sustained the injury. The employee shall be entitled to a total benefit based on the total average
110 weekly wage of such employee computed according to subsection 8 of section 287.250. The
111 employee shall not be entitled to a greater rate of compensation than allowed by law on the date

112 of the injury. The employer for whom the employee was working where the injury was sustained
113 shall be responsible for all medical costs incurred in regard to that injury.

114 **11. Notwithstanding any provision of law to the contrary, if a claimant does not**
115 **settle a claim for compensation in a lump sum payment of forty thousand dollars or less,**
116 **the claimant shall be subject to the following:**

117 **(1) An independent medical evaluation;**

118 **(2) Appropriate vocational testing or a vocational assessment;**

119 **(3) An evidentiary hearing for findings of fact;**

120 **(4) Written findings by an administrative law judge after a hearing conducted with**
121 **the claimant present.**

122 **12. (1) Beginning August 28, 2009, claims against the second injury fund shall only**
123 **be compensated as provided for in subsections 10 to 14 of this section. Claims for disability**
124 **against the second injury fund shall be compensable where an employee has a medically**
125 **documented preexisting disability as a direct result of active military duty or as a result of**
126 **a preexisting permanent partial disability from a compensable injury as defined in section**
127 **287.020. To be compensable from the second injury fund, there shall be a medically**
128 **documented preexisting disability resulting from active military duty or a preexisting**
129 **permanent partial disability from a compensable injury as defined in section 287.020,**
130 **which equals a minimum of fifty weeks of compensation, or if a major extremity injury**
131 **only, equals a minimum of fifteen percent permanent partial disability according to the**
132 **medical standards that are used in determining such compensation, and thereafter sustains**
133 **a subsequent work-related injury that, when combined with the preexisting military**
134 **disability or preexisting permanent partial disability from a compensable injury as defined**
135 **in section 287.020, results in permanent total disability as defined in section 287.020,**
136 **compensation for such permanent total disability shall be paid as provided herein.**

137 **(2) If the preexisting permanent partial disability from a compensable injury as**
138 **defined in section 287.020 or a disability resulting from active military duty and the**
139 **subsequent work-related injury that is found to be compensable as defined in section**
140 **287.020 together result in total and permanent disability, then the employer at the time of**
141 **the subsequent work-related injury shall be liable only for the disability resulting from the**
142 **subsequent work-related injury considered alone and of itself; except that if the**
143 **compensation for which the employer at the time of the subsequent work-related injury is**
144 **liable is less than the compensation provided in this chapter for permanent total disability,**
145 **then in addition to the compensation for which the employer is liable and after the**
146 **completion of payment of the compensation by the employer, the employee shall be paid**

147 the remainder of the compensation that would be due for the permanent total disability
148 under section 287.200 out of the second injury fund.

149 (3) Any person receiving permanent total disability benefits from the fund shall
150 annually, from the date when the award is deemed final and conclusive or the date a
151 settlement is approved by the division, submit to the division proof of eligibility to continue
152 receiving permanent total disability benefits supported by the treating physician that
153 includes a vocational rehabilitation assessment from a rehabilitation provider of the
154 employee's current and projected functional capabilities and limitations and other relevant
155 information that the division deems necessary. The vocational rehabilitation assessment
156 shall be paid by the second injury fund.

157 (4) Maintenance of the second injury fund shall be provided by section 287.710.
158 The state treasurer shall be the custodian of the fund which shall be deposited the same as
159 are the state funds and any interest accruing thereon shall be added thereto. The funds
160 shall be subject to audit the same as state funds and accounts and shall be protected by the
161 general bond given by the state treasurer.

162 13. (1) In all cases in which a recovery against the fund is sought for permanent
163 total disability, the employee shall file a claim naming the treasurer of the state of Missouri
164 as custodian of the fund as a party and the employee shall submit to appropriate vocational
165 testing, a vocational rehabilitation assessment, and an independent medical examination
166 scheduled by the fund.

167 (2) All awards for permanent total disability or medical or death benefits for an
168 uninsured employer affecting the fund, shall be subject to the provisions of this chapter
169 governing review and appeal.

170 (3) Compensation for benefits payable under this section, shall be based on the
171 average weekly wage calculated under section 287.250 as of the date of the injury.

172 14. If an employer fails to insure or self-insure as required in section 287.280, funds
173 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
174 expenses to cure and relieve the effects of the injury or of an injured employee in the
175 employ of an uninsured employer, or in the case of death of an employee in the employ of
176 an uninsured employer, funds from the second injury fund may be withdrawn to cover
177 fair, reasonable, and necessary medical expenses in the manner required in sections
178 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer of
179 the state of Missouri, as custodian of the fund, shall have the same defenses to such claims
180 as would the uninsured employer, including the right to dispute the reasonableness of the
181 medical charges or fees based upon an audit of the medical bills. The treasurer of the state
182 of Missouri shall be permitted to present any evidence with respect to the audit findings

183 on the medical charges. Any moneys received by the employee or the employee's
184 dependents through civil or other action against the uninsured employer as a result of the
185 injury may go toward reimbursement of the second injury fund for all payments made to
186 the employee, the employee's dependents, or paid on the employee's behalf from the fund
187 under this subsection. The office of the attorney general of the state of Missouri shall bring
188 suit in the circuit court of the county in which the accident occurred against the employer
189 not covered by this chapter as required in section 287.280.

190 **15. All claims for permanent total disability shall be determined in accordance with**
191 **the facts. When an injured employee receives an award for permanent total disability but**
192 **by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is**
193 **restored to his regular work or its equivalent, the life payment mentioned in subsection 1**
194 **of this section shall be suspended during the time in which the employee is restored to his**
195 **regular work or its equivalent. The employer and the division shall keep the file open in**
196 **the case during the lifetime of any injured employee who has received an award of**
197 **permanent total disability. In any case where the life payment is suspended under this**
198 **subsection, the commission may at reasonable times review the case and either the**
199 **employee or the employer may request an informal conference with the commission**
200 **relative to the resumption of the employee's weekly life payment in the case.**
201 **Notwithstanding the requirements of section 287.470, the life payments to an injured**
202 **employee made from the fund shall be suspended when the employee is able to obtain**
203 **suitable gainful employment or be self-employed in view of the nature and severity of the**
204 **injury. The division shall promulgate rules setting forth a reasonable standard means test**
205 **to determine if such employment warrants the suspension of benefits. Notwithstanding the**
206 **requirements of section 287.470, the director may suspend, in whole or in part, the life**
207 **payments to an injured employee made from the fund when the employee becomes eligible**
208 **to receive Social Security benefits attributable to the employee's injury. In no case shall**
209 **the sum of the amount of monthly payments from the fund and the monthly Social Security**
210 **benefits attributable to the employee's injury, be less than the monthly life payments from**
211 **the fund the employee has been receiving.**

212 **16. For any second and subsequent claim filed on behalf of a claimant against the**
213 **second injury fund for each disability, a fee shall be paid by the claimant in the amount of**
214 **two hundred dollars and deposited into the second injury fund.**

215 **17. Upon the requisition of the director of the division of workers' compensation,**
216 **warrants on the state treasurer for the payment of all amounts payable for compensation**
217 **and benefits out of the second injury fund shall be issued, except that no claimant receiving**
218 **a lump sum amount or award shall be compensated from the fund in an amount greater**

219 **than ten thousand dollars in any twelve-month period but shall be compensated in amounts**
220 **necessary until the lump sum amount is satisfied. Such amount shall be exclusive of any**
221 **accumulated medical expenses provided that the amount of medical expenses do not exceed**
222 **the settlement amount.**

223 **18. No compensation shall be payable from the second injury fund if the employee**
224 **elects to pursue compensation under the workers' compensation law of another state with**
225 **jurisdiction over the employees' injury or accident or occupational disease.**

287.226. Notwithstanding any other provision of law to the contrary, no person
2 **shall receive compensation for injuries under this chapter for temporary or permanent**
3 **disability, or combination thereof, which in the aggregate exceeds the weekly benefit**
4 **amount such person would receive for permanent total disability under section 287.200.**
5 **For purposes of comparison under this section, any lump sum amount payable through the**
6 **second injury fund for such disability shall be divided by the number of weeks until such**
7 **employee reaches sixty-two years of age and added to any weekly benefit amounts payable**
8 **for such disability to determine compensation for injuries.**

287.260. 1. The compensation payable under this chapter, whether or not it has been
2 awarded or is due, shall not be assignable, shall be exempt from attachment, garnishment, and
3 execution, shall not be subject to setoff or counterclaim, or be in any way liable for any debt and
4 in case of the insolvency of an employer or his insurer, or the levy of an attachment or an
5 execution against an employer or insurer shall be entitled to the same preference and priority as
6 claims for wages, without limit as to time or amount, except that if written notice is given to the
7 division or the commission of the nature and extent thereof, the division or the commission may
8 allow as lien on the compensation, reasonable attorney's fees for services in connection with the
9 proceedings for compensation if the services are found to be necessary and may order the amount
10 thereof paid to the attorney in a lump sum or in installments. All attorney's fees for services in
11 connection with this chapter shall be subject to regulation by the division or the commission and
12 shall be limited to such charges as are fair and reasonable and the division or the commission
13 shall have jurisdiction to hear and determine all disputes concerning the same. **However,**
14 **attorney fees shall not exceed fifteen percent of any award, lump sum settlement, or an**
15 **annuity settlement against the second injury fund.**

16 2. Notwithstanding subsection 1 of this section, the compensation payable under this
17 chapter other than compensation for medical expenses and therapy under section 287.141, shall
18 be assignable for the purpose of satisfying child support obligations, shall be subject to
19 attachment, garnishment and execution for the purpose of collecting and satisfying unpaid and
20 delinquent child support obligations, and shall be subject to the lien provided for in section

21 454.517, RSMo. Section 452.140, RSMo, shall apply to limit property exemptions available in
22 an action to collect child support under this subsection.

2 **287.315. Upon request by the director of the division, the department of insurance,**
3 **financial institutions, and professional registration shall audit the insurance policies of**
4 **companies insured in multiple states for the purpose of determining the amount of the**
5 **insurance premium that is applicable to Missouri workers.**

287.690. [1. Prior to December 31, 1993,] **Beginning January 1, 2010**, for the purpose
2 of providing for the expense of administering this chapter [and for the purpose set out in
3 subsection 2 of this section], every person, partnership, association, corporation, whether
4 organized under the laws of this or any other state or country, the state of Missouri, including any
5 of its departments, divisions, agencies, commissions, and boards or any political subdivisions
6 of the state who self-insure or hold themselves out to be any part self-insured, company, mutual
7 company, the parties to any interindemnity contract, or other plan or scheme, and every other
8 insurance carrier, insuring employers in this state against liability for personal injuries to their
9 employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter,
10 tax upon the net deposits, net premiums or net assessments received, whether in cash or notes
11 in this state, or on account of business done in this state, for such insurance in this state at the
12 **annual rate of no less than one-half of one percent and no greater than two percent** in lieu
13 of all [other] **premium** taxes on such net deposits, net premiums or net assessments, which
14 amount of taxes shall be assessed and collected as herein provided. Beginning October 31,
15 [1993] **2009**, and every year thereafter, the director of the division of workers' compensation
16 shall estimate the amount of revenue required to administer this chapter and the **division** director
17 shall determine the rate of tax to be paid in the following calendar year pursuant to this section
18 commencing with the calendar year beginning on January 1, [1994] **2010**. If the balance of the
19 fund [estimated to be] on hand on [December thirty-first] **July first** of the year each tax rate
20 determination is made **on October thirty-first** is less than one hundred ten percent of the
21 previous year's expenses plus any additional revenue required due to new statutory requirements
22 given to the division by the general assembly, then the **division** director shall impose a tax not
23 to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments,
24 rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed
25 and collected as herein provided. The net premium equivalent for individual self-insured
26 employers and any group of political subdivisions of this state qualified to self-insure their
27 liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on
28 average rate classifications calculated by the department of insurance, **financial institutions and**
29 **professional registration** as taken from premium rates filed by the twenty insurance companies
30 providing the greatest volume of workers' compensation insurance coverage in this state. For

31 employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such
32 group of employers in accordance with subsection 2 of section 287.280 shall be the net premium
33 equivalent. Every entity required to pay the tax imposed pursuant to this section and section
34 287.730 shall be notified by the division of workers' compensation within ten calendar days of
35 the date of the determination of the rate of tax to be imposed for the following year. Net
36 premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross
37 assessments less canceled or returned premiums, premium deposits or assessments and less
38 dividends or savings, actually paid or credited.

39 [2. After January 1, 1994, the director of the division shall make one or more loans to
40 the Missouri employers mutual insurance company in an amount not to exceed an aggregate
41 amount of five million dollars from the fund maintained to administer this chapter for start-up
42 funding and initial capitalization of the company. The board of the company shall make
43 application to the director for the loans, stating the amount to be loaned to the company. The
44 loans shall be for a term of five years and, at the time the application for such loans is approved
45 by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as
46 calculated by the state treasurer pursuant to section 30.758, RSMo.]

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] **2009**, and each year thereafter, the director of the
12 division of workers' compensation shall estimate the amount of benefits payable from the second
13 injury fund during the following calendar year and shall calculate the total amount of the annual
14 surcharge to be imposed during the following calendar year upon all workers' compensation
15 policyholders and authorized self-insurers. The amount of the annual surcharge percentage to
16 be imposed upon each policyholder and self-insured for the following calendar year commencing
17 with the calendar year beginning on January 1, [2006] **2010**, shall be set at and calculated against
18 a percentage, not to exceed three percent, of the policyholder's or self-insured's workers'
19 compensation net deposits, net premiums, or net assessments for the previous policy year,
20 rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible,

21 one hundred ten percent of the moneys to be paid from the second injury fund in the following
22 calendar year, less any moneys contained in the fund at the end of the previous [calendar] **fiscal**
23 year. All policyholders and self-insurers shall be notified by the division of workers'
24 compensation within ten calendar days of the determination of the surcharge percent to be
25 imposed for, and paid in, the following calendar year. The net premium equivalent for individual
26 self-insured employers and any group of political subdivisions of this state qualified to
27 self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall
28 be based on average rate classifications calculated by the department of insurance, **financial**
29 **institutions and professional registration** as taken from premium rates filed by the twenty
30 insurance companies providing the greatest volume of workers' compensation insurance coverage
31 in this state. For employers qualified to self-insure their liability pursuant to this chapter, the
32 rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall
33 be the net premium equivalent. The **division** director may advance [funds] **moneys** from the
34 workers' compensation fund to the second injury fund if surcharge collections prove to be
35 insufficient. **The outstanding total of moneys advanced by the division director from the**
36 **workers' compensation fund to the second injury fund shall not exceed thirty-three and**
37 **one-third percent of the total amount of the annual surcharge as calculated in this section**
38 **to be imposed in the year moneys are advanced to the second injury fund. No additional**
39 **advance from the workers' compensation fund to the second injury fund shall be made by**
40 **the director until the previous advance has been reimbursed in full.** Any [funds] **moneys**
41 advanced from the workers' compensation fund to the second injury fund [must] **shall** be
42 reimbursed by the second injury fund no later than December thirty-first of the **fifth** year
43 following the advance. The surcharge shall be collected from policyholders by each insurer at
44 the same time and in the same manner that the premium is collected, but no insurer or its agent
45 shall be entitled to any portion of the surcharge as a fee or commission for its collection. The
46 surcharge is not subject to any taxes, licenses or fees.

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

49 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
50 insurers shall pay the amounts not later than the thirtieth day of the month following the end of
51 the quarter in which the amount is received from policyholders. **Payments required under this**
52 **section shall be deemed made the earlier of either the date postmarked by the United States**
53 **Post Office on the envelope or container in which such paper is received or the date**
54 **certified by a commercial delivery service as the date its customer deposited for delivery**
55 **and paid such delivery charges the envelope or container in which such paper is received.**
56 **For electronic payments or electronic transfer of funds, payments required under this**

57 **section shall be deemed made on the date the funds are received by the division.** If the
58 director of the division of workers' compensation fails to calculate the surcharge by the
59 thirty-first day of October of any year for the following year, any increase in the surcharge
60 ultimately set by the director shall not be effective for any calendar quarter beginning less than
61 sixty days from the date the director makes such determination. **If after the end of any**
62 **calendar year, the amount of the actual surcharge due is less than the total amount of the**
63 **installments actually paid, the amount by which the amount paid exceeds the amount due**
64 **shall only be credited against the surcharge for the following year and deducted from the**
65 **quarterly installment due on June first and any other payments required by this section**
66 **until the credit is exhausted. In the event no such payments are due and upon application**
67 **of the insurer or self-insurer to the director of the division of workers' compensation, the**
68 **director of revenue may refund the amount of credit if no other obligation is owed to the**
69 **state. The procedure for the refund is set forth in section 287.745.**

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

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