

SECOND REGULAR SESSION

# HOUSE BILL NO. 2075

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HUNTER.

Read 1st time March 29, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5630L.01I

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### AN ACT

To repeal sections 287.220, 287.250, and 287.280, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

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

Section A. Sections 287.220, 287.250, and 287.280, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 287.220, 287.250, and 287.280, to read  
3 as follows:

287.220. 1. All cases of permanent **total** disability where there has been previous  
2 disability shall be compensated as herein provided. Compensation shall be computed on the  
3 basis of the average earnings at the time of the last injury. If any employee who has a preexisting  
4 permanent partial disability [whether] from compensable injury [or otherwise,] of such  
5 seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment  
6 if the employee becomes unemployed, and the preexisting permanent partial disability, if a body  
7 as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity  
8 injury only, equals a minimum of fifteen percent permanent partial disability, according to the  
9 medical standards that are used in determining such compensation, receives a subsequent  
10 compensable injury resulting in [additional] permanent [partial] **total** disability so that the degree  
11 or percentage of disability[, in an amount equal to a minimum of fifty weeks compensation, if  
12 a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent  
13 permanent partial disability,] caused by the combined disabilities is substantially greater than that  
14 which would have resulted from the last injury, considered alone and of itself, and if the

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

44       2. In all cases in which a recovery against the second injury fund is sought for  
45 [permanent partial disability,] permanent total disability[,], or death, the state treasurer as  
46 custodian thereof shall be named as a party, and shall be entitled to defend against the claim.  
47 The state treasurer, with the advice and consent of the attorney general of Missouri, may enter  
48 into compromise settlements as contemplated by section 287.390, or agreed statements of fact  
49 that would affect the second injury fund. All awards for [permanent partial disability,]  
50 permanent total disability[,], or death affecting the second injury fund shall be subject to the

51 provisions of this chapter governing review and appeal. For all claims filed against the second  
52 injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general  
53 except in circumstances where an actual or potential conflict of interest exists, to provide legal  
54 services as may be required in all claims made for recovery against the fund. Any legal expenses  
55 incurred by the attorney general's office in the handling of such claims, including, but not limited  
56 to, medical examination fees, expert witness fees, court reporter expenses, travel costs, and  
57 related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such  
58 legal expenses shall be contingent upon annual appropriations made by the general assembly,  
59 from the fund, to the attorney general's office for this specific purpose.

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

62 4. If more than one injury in the same employment causes concurrent and consecutive  
63 permanent partial disability, compensation payments for each subsequent disability shall not  
64 begin until the end of the compensation period of the prior disability.

65 5.] If an employer fails to insure or self-insure as required in section 287.280, funds from  
66 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses  
67 to cure and relieve the effects of the injury or disability of an injured employee in the employ of  
68 an uninsured employer, or in the case of death of an employee in the employ of an uninsured  
69 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and  
70 necessary expenses in the manner required in sections 287.240 and 287.241. In defense of  
71 claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the  
72 second injury fund, shall have the same defenses to such claims as would the uninsured  
73 employer. Any funds received by the employee or the employee's dependents, through civil or  
74 other action, must go towards reimbursement of the second injury fund, for all payments made  
75 to the employee, the employee's dependents, or paid on the employee's behalf, from the second  
76 injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri  
77 shall bring suit in the circuit court of the county in which the accident occurred against any  
78 employer not covered by this chapter as required in section 287.280.

79 [6.] 4. Every three years the second injury fund shall have an actuarial study made to  
80 determine the solvency of the fund, appropriate funding level of the fund, and forecasted  
81 expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988.  
82 The expenses of such actuarial studies shall be paid out of the fund for the support of the division  
83 of workers' compensation.

84 [7.] 5. The director of the division of workers' compensation shall maintain the financial  
85 data and records concerning the fund for the support of the division of workers' compensation  
86 and the second injury fund. The division shall also compile and report data on claims made

87 pursuant to subsection [9] 7 of this section. The attorney general shall provide all necessary  
88 information to the division for this purpose.

89 [8.] 6. All claims for fees and expenses filed against the second injury fund and all  
90 records pertaining thereto shall be open to the public.

91 [9.] 7. Any employee who at the time a compensable work-related injury is sustained is  
92 employed by more than one employer, the employer for whom the employee was working when  
93 the injury was sustained shall be responsible for wage loss benefits applicable only to the  
94 earnings in that employer's employment and the injured employee shall be entitled to file a claim  
95 against the second injury fund for any additional wage loss benefits attributed to loss of earnings  
96 from the employment or employments where the injury did not occur, up to the maximum  
97 weekly benefit less those benefits paid by the employer in whose employment the employee  
98 sustained the injury. The employee shall be entitled to a total benefit based on the total average  
99 weekly wage of such employee computed according to subsection 8 of section 287.250. The  
100 employee shall not be entitled to a greater rate of compensation than allowed by law on the date  
101 of the injury. The employer for whom the employee was working where the injury was sustained  
102 shall be responsible for all medical costs incurred in regard to that injury.

287.250. 1. Except as otherwise provided for in this chapter, the method of computing  
2 an injured employee's average weekly earnings which will serve as the basis for compensation  
3 provided for in this chapter shall be as follows:

4 (1) If the wages are fixed by the week, the amount so fixed shall be the average weekly  
5 wage;

6 (2) If the wages are fixed by the month, the average weekly wage shall be the monthly  
7 wage so fixed multiplied by twelve and divided by fifty-two;

8 (3) If the wages are fixed by the year, the average weekly wage shall be the yearly wage  
9 fixed divided by fifty-two;

10 (4) If the wages were fixed by the day, hour, or by the output of the employee, the  
11 average weekly wage shall be computed by dividing by thirteen the wages earned while actually  
12 employed by the employer in each of the last thirteen calendar weeks immediately preceding the  
13 week in which the employee was injured or if actually employed by the employer for less than  
14 thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the  
15 employee was actually employed by the employer. For purposes of computing the average  
16 weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even  
17 if not in the same calendar week, shall be considered as absence for a calendar week. If the  
18 employee commenced employment on a day other than the beginning of a calendar week, such  
19 calendar week and the wages earned during such week shall be excluded in computing the  
20 average weekly wage pursuant to this subdivision;

21 (5) If the employee has been employed less than two calendar weeks immediately  
22 preceding the injury, the employee's weekly wage shall be considered to be equivalent to the  
23 average weekly wage prevailing in the same or similar employment at the time of the injury,  
24 except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon  
25 multiplied by the number of weekly hours scheduled shall be the employee's average weekly  
26 wage;

27 (6) If the hourly wage has not been fixed or cannot be ascertained, or the employee  
28 earned no wage, the wage for the purpose of calculating compensation shall be taken to be the  
29 usual wage for similar services where such services are rendered by paid employees of the  
30 employer or any other employer;

31 (7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this  
32 subsection, an employee shall be considered to have been actually employed for only those  
33 weeks in which labor is actually performed by the employee for the employer and wages are  
34 actually paid by the employer as compensation for such labor.

35 2. For purposes of this section, the term "gross wages" includes, in addition to money  
36 payments for services rendered, the reasonable value of board, rent, housing, lodging or similar  
37 advance received from the employer, except if such benefits continue to be provided during the  
38 period of the disability, then the value of such benefits shall not be considered in calculating the  
39 average weekly wage of the employee. The term "wages", as used in this section, includes the  
40 value of any gratuities received in the course of employment from persons other than the  
41 employer to the extent that such gratuities are reported for income tax purposes. "Wages", as  
42 used in this section, does not include fringe benefits such as retirement, pension, health and  
43 welfare, life insurance, training, Social Security or other employee or dependent benefit plan  
44 furnished by the employer for the benefit of the employee. Any wages paid to helpers or any  
45 money paid by the employer to the employee to cover any special expenses incurred by the  
46 employee because of the nature of his employment shall not be included in wages.

47 3. If an employee is hired by the employer for less than the number of hours per week  
48 needed to be classified as a full-time or regular employee, benefits computed for purposes of this  
49 chapter for permanent partial disability, permanent total disability and death benefits shall be  
50 based upon the average weekly wage of a full-time or regular employee engaged by the employer  
51 to perform work of the same or similar nature and at the number of hours per week required by  
52 the employer to classify the employee as a full-time or regular employee, but such computation  
53 shall not be based on less than thirty hours per week.

54 4. If pursuant to this section the average weekly wage cannot fairly and justly be  
55 determined by the formulas provided in subsections 1 to 3 of this section, the division or the  
56 commission may determine the average weekly wage in such manner and by such method as, in

57 the opinion of the division or the commission, based upon the exceptional facts presented, fairly  
58 determine such employee's average weekly wage.

59 5. In computing the compensation to be paid to an employee, who, before the injury for  
60 which the employee claims compensation, was disabled and drawing compensation under the  
61 provisions of this chapter, the compensation for each subsequent injury shall be apportioned  
62 according to the proportion of incapacity and disability caused by the respective injuries which  
63 the employee may have suffered.

64 6. For purposes of establishing a rate of compensation applicable only to permanent  
65 partial disability, permanent total disability and death benefits, pursuant to this chapter, the  
66 average weekly wage for an employee who is under the age of twenty-one years shall be adjusted  
67 to take into consideration the increased earning power of such employee until she or he attains  
68 the age of twenty-one years and the average weekly wage for an employee who is an apprentice  
69 or a trainee, and whose earnings would reasonably be expected to increase, shall be adjusted to  
70 reflect a level of expected increase, based upon completion of apprenticeship or traineeship,  
71 provided that such adjustment of the average weekly wage shall not consider expected increase  
72 for a period occurring more than three years after the date of the injury.

73 7. In all cases in which it is found by the division or the commission that the employer  
74 knowingly employed a minor in violation of the child labor laws of this state, a fifty percent  
75 additional compensation shall be allowed.

76 8. For an employee with multiple employments, as to the employee's entitlement to any  
77 temporary total or temporary partial disability benefits only pursuant to subsection [9] 7 of  
78 section 287.220, and for no other purposes, the employee's total average weekly wage shall be  
79 equal to the sum of the total of the average weekly wage computed separately for each  
80 employment pursuant to the provisions of this section to which the employee is unable to return  
81 because of this injury.

82 9. The parties, by agreement and with approval of an administrative law judge, legal  
83 advisor or the commission, may enter into a compromise lump sum settlement in either  
84 permanent total or permanent partial disability cases which prorates the lump sum settlement  
85 over the life expectancy of the injured worker. When such an agreement has been approved,  
86 neither the weekly compensation rate paid throughout the case nor the maximum statutory  
87 weekly rate applicable to the injury shall apply. No compensation rate shall exceed the  
88 maximum statutory weekly rate as of the date of the injury. Instead, the prorated rate set forth  
89 in the approved settlement documents shall control and become the rate for that case. This  
90 section shall be retroactive in effect.

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

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

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

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

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

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

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

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

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