

FIRST REGULAR SESSION

# HOUSE BILL NO. 685

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HUNTER.

Read 1st time January 31, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0829L.01I

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### AN ACT

To repeal section 287.220, RSMo, and to enact in lieu thereof one new section relating to the second injury fund.

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

Section A. Section 287.220, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.220, to read as follows:

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

16 last injury shall be liable only for the degree or percentage of disability which would have  
17 resulted from the last injury had there been no preexisting disability. After the compensation  
18 liability of the employer for the last injury, considered alone, has been determined by an  
19 administrative law judge or the commission, the degree or percentage of employee's disability  
20 that is attributable to all injuries or conditions existing at the time the last injury was sustained  
21 shall then be determined by that administrative law judge or by the commission and the degree  
22 or percentage of disability which existed prior to the last injury plus the disability resulting from  
23 the last injury, if any, considered alone, shall be deducted from the combined disability, and  
24 compensation for the balance, if any, shall be paid out of a special fund known as the second  
25 injury fund, hereinafter provided for. If the previous disability or disabilities, whether from  
26 compensable injury or otherwise, and the last injury together result in total and permanent  
27 disability, the minimum standards under this subsection for a body as a whole injury or a major  
28 extremity injury shall not apply and the employer at the time of the last injury shall be liable only  
29 for the disability resulting from the last injury considered alone and of itself; except that if the  
30 compensation for which the employer at the time of the last injury is liable is less than the  
31 compensation provided in this chapter for permanent total disability, then in addition to the  
32 compensation for which the employer is liable and after the completion of payment of the  
33 compensation by the employer, the employee shall be paid the remainder of the compensation  
34 that would be due for permanent total disability under section 287.200 out of a special fund  
35 known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section  
36 provided and for special weekly benefits in rehabilitation cases as provided in section 287.141.  
37 Maintenance of the second injury fund shall be as provided by section 287.710. The state  
38 treasurer shall be the custodian of the second injury fund which shall be deposited the same as  
39 are state funds and any interest accruing thereon shall be added thereto. The fund shall be  
40 subject to audit the same as state funds and accounts and shall be protected by the general bond  
41 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 permanent  
45 partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall  
46 be named as a party, and shall be entitled to defend against the claim. The state treasurer, with  
47 the advice and consent of the attorney general of Missouri, may enter into compromise  
48 settlements as contemplated by section 287.390, or agreed statements of fact that would affect  
49 the second injury fund. All awards for permanent partial disability, permanent total disability,  
50 or death affecting the second injury fund shall be subject to the provisions of this chapter  
51 governing review and appeal. For all claims filed against the second injury fund on or after July

52 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where  
53 an actual or potential conflict of interest exists, to provide legal services as may be required in  
54 all claims made for recovery against the fund. Any legal expenses incurred by the attorney  
55 general's office in the handling of such claims, including, but not limited to, medical examination  
56 fees, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall  
57 be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be  
58 contingent upon annual appropriations made by the general assembly, from the fund, to the  
59 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. 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. The director of the division of workers' compensation shall maintain the financial data  
85 and records concerning the fund for the support of the division of workers' compensation and the  
86 second injury fund. The division shall also compile and report data on claims made pursuant to

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

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

91 9. 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.

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

108 **11. The division shall promulgate rules to implement the provisions of this section.**  
109 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**  
110 **created under the authority delegated in this section shall become effective only if it**  
111 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
112 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
113 **and if any of the powers vested with the general assembly under chapter 536, RSMo, to**  
114 **review, to delay the effective date, or to disapprove and annul a rule are subsequently held**  
115 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
116 **after August 28, 2007, shall be invalid and void.**

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