

SECOND REGULAR SESSION

HOUSE BILL NO. 2310

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUNTER.

Read 1st time February 28, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4512L.02I

AN ACT

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

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Section A. Section 287.220, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.220, to read as follows: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, 2009. The division shall compute moneys to**
105 **persons eligible for such award for injuries occurring before January 1, 2009, and assess**
106 **employers. Such employer assessment shall be apportioned, collected, and not exceed the**
107 **annual surcharge cap of three percent as specified in section 287.715. Any remaining funds**
108 **after all awards have been satisfied shall lapse into the workers' compensation fund. The**
109 **division shall promulgate rules to implement the provisions of this section. Any rule or**
110 **portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**
111 **the authority delegated in this section shall become effective only if it complies with and**
112 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
113 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**
114 **vested with the general assembly under chapter 536, RSMo, to review, to delay the effective**
115 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
116 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2008,**
117 **shall be invalid and void. This subsection shall become effective August 28, 2008.**

118 11. In applying the provisions of this chapter, it is the intent of the legislature to
119 reject and abrogate the holding in *Schoemehl v. Treasurer of the State of Missouri*, 217
120 S.W.3d 900 (Mo. banc 2007), and all cases citing, interpreting, applying, or following this
121 case.

Section B. Because of the need to preserve the solvency of the workers' compensation
2 system, section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace and safety, and is hereby declared to be an emergency act within the
4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage and approval.

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