

SECOND REGULAR SESSION

HOUSE BILL NO. 2302

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUNTER.

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

D. ADAM CRUMBLISS, Chief Clerk

5363L.01I

AN ACT

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

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Section A. Section 287.220, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.220, to read as follows: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] **director of the division of workers'**
48 **compensation or the designee of the director of the division of workers' compensation**, may
49 enter into compromise settlements as contemplated by section 287.390, or agreed statements of
50 fact that would affect the second injury fund. All awards for permanent partial disability,
51 permanent total disability, or death affecting the second injury fund shall be subject to the

52 provisions of this chapter governing review and appeal. For all **pending and new** claims filed
53 against the second injury fund on or after [July 1, 1994] **August 28, 2008**, the [attorney general]
54 **director of the division of workers' compensation or the designee of the director of the**
55 **division of workers' compensation** shall use [assistant attorneys general] **staff attorneys**
56 **employed by the division of workers' compensation** except in circumstances where an actual
57 or potential conflict of interest exists, to provide legal services as may be required in all claims
58 made for recovery against the fund, **including but not limited to, appearing on behalf of the**
59 **state treasurer to defend against the claims. In circumstances where an actual or potential**
60 **conflict of interest exists, the director of the division of workers' compensation or the**
61 **designee of the director of the division of workers' compensation may assign cases to staff**
62 **attorneys employed only by the department of labor and industrial relations or may, with**
63 **the consent of the state treasurer, hire outside counsel.** Any legal expenses incurred by the
64 [attorney general's office] **division of workers' compensation** in the handling of such claims,
65 including, but not limited to, medical examination fees, **vocational testing fees, vocational**
66 **rehabilitation assessment fees**, expert witness fees, court reporter expenses, travel costs, and
67 related legal expenses shall be paid by the fund. **By September first of each year, beginning**
68 **September 1, 2009, the director of the division of workers' compensation shall compile and**
69 **send to the governor, state treasurer, and members of the general assembly a report**
70 **accounting for all expenses from the second injury fund, including the cost of any outside**
71 **counsel or second injury fund expenses paid out of the fund for the support of the division**
72 **of workers' compensation for the previous fiscal year. All revenues deposited to the credit**
73 **of the second injury fund and all benefit payments paid by the second injury fund shall be**
74 **accounted for by category in the annual report.** Effective [July 1, 1993] **August 28, 2008**,
75 the payment of such legal expenses shall be contingent upon annual appropriations made by the
76 general assembly, from the fund, to the [attorney general's office] **division of workers'**
77 **compensation** for this specific purpose.

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

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

83 5. If an employer fails to insure or self-insure as required in section 287.280, funds from
84 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses
85 to cure and relieve the effects of the injury or disability of an injured employee in the employ of
86 an uninsured employer, or in the case of death of an employee in the employ of an uninsured
87 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and

88 necessary expenses in the manner required in sections 287.240 and 287.241. In defense of
89 claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the
90 second injury fund, shall have the same defenses to such claims as would the uninsured
91 employer. Any funds received by the employee or the employee's dependents, through civil or
92 other action, must go towards reimbursement of the second injury fund, for all payments made
93 to the employee, the employee's dependents, or paid on the employee's behalf, from the second
94 injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri
95 shall bring suit in the circuit court of the county in which the accident occurred against any
96 employer not covered by this chapter as required in section 287.280.

97 6. Every three years the second injury fund shall have an actuarial study made to
98 determine the solvency of the fund, appropriate funding level of the fund, and forecasted
99 expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988.
100 The expenses of such actuarial studies shall be paid out of the fund for the support of the division
101 of workers' compensation.

102 7. The director of the division of workers' compensation shall maintain the financial data
103 and records concerning the fund for the support of the division of workers' compensation and the
104 second injury fund. The division shall also compile and report data on claims made pursuant to
105 subsection 9 of this section. The attorney general shall provide all necessary information to the
106 division for this purpose.

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

109 9. Any employee who at the time a compensable work-related injury is sustained is
110 employed by more than one employer, the employer for whom the employee was working when
111 the injury was sustained shall be responsible for wage loss benefits applicable only to the
112 earnings in that employer's employment and the injured employee shall be entitled to file a claim
113 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
114 from the employment or employments where the injury did not occur, up to the maximum
115 weekly benefit less those benefits paid by the employer in whose employment the employee
116 sustained the injury. The employee shall be entitled to a total benefit based on the total average
117 weekly wage of such employee computed according to subsection 8 of section 287.250. The
118 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
119 of the injury. The employer for whom the employee was working where the injury was sustained
120 shall be responsible for all medical costs incurred in regard to that injury.

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