

FIRST REGULAR SESSION

SENATE BILL NO. 417

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1840S.011

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Section A. Section 287.220, RSMo, is repealed and one new section
2 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
2 previous disability, **and for which compensation has been awarded or**
3 **which have been filed prior to July 1, 2011**, shall be compensated as herein
4 provided. Compensation shall be computed on the basis of the average earnings
5 at the time of the last injury. If any employee who has a preexisting permanent
6 partial disability whether from compensable injury or otherwise, of such
7 seriousness as to constitute a hindrance or obstacle to employment or to obtaining
8 reemployment if the employee becomes unemployed, and the preexisting
9 permanent partial disability, if a body as a whole injury, equals a minimum of
10 fifty weeks of compensation or, if a major extremity injury only, equals a
11 minimum of fifteen percent permanent partial disability, according to the medical
12 standards that are used in determining such compensation, receives a subsequent
13 compensable injury resulting in additional permanent partial disability so that
14 the degree or percentage of disability, in an amount equal to a minimum of fifty
15 weeks compensation, if a body as a whole injury or, if a major extremity injury
16 only, equals a minimum of fifteen percent permanent partial disability, caused
17 by the combined disabilities is substantially greater than that which would have
18 resulted from the last injury, considered alone and of itself, and if the employee
19 is entitled to receive compensation on the basis of the combined disabilities, the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

54 2. In all cases in which a recovery against the second injury fund is
55 sought for permanent partial disability, permanent total disability, or death, the

56 state treasurer as custodian thereof shall be named as a party, and shall be
57 entitled to defend against the claim. The state treasurer, with the advice and
58 consent of the attorney general of Missouri, may enter into compromise
59 settlements as contemplated by section 287.390, or agreed statements of fact that
60 would affect the second injury fund. All awards for permanent partial disability,
61 permanent total disability, or death affecting the second injury fund shall be
62 subject to the provisions of this chapter governing review and appeal. For all
63 claims filed against the second injury fund on or after July 1, 1994, the attorney
64 general shall use assistant attorneys general except in circumstances where an
65 actual or potential conflict of interest exists, to provide legal services as may be
66 required in all claims made for recovery against the fund. Any legal expenses
67 incurred by the attorney general's office in the handling of such claims, including,
68 but not limited to, medical examination fees, expert witness fees, court reporter
69 expenses, travel costs, and related legal expenses shall be paid by the
70 fund. Effective July 1, 1993, the payment of such legal expenses shall be
71 contingent upon annual appropriations made by the general assembly, from the
72 fund, to the attorney general's office for this specific purpose. **Beginning on**
73 **July 1, 2011, the attorney general shall quarterly transmit the projected**
74 **cost of all legal expenses related to defense of the fund, including**
75 **personnel services and equipment and expenses, to the director. The**
76 **director shall withhold sufficient funds to meet the quarterly legal**
77 **expenses, not to exceed one-fourth of the annual appropriation by the**
78 **general assembly for this specific purpose. The attorney general shall**
79 **reduce staff defending the second injury fund in proportion to the**
80 **number of pending cases.**

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

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

88 5. If an employer fails to insure or self-insure as required in section
89 287.280, funds from the second injury fund may be withdrawn to cover the fair,
90 reasonable, and necessary expenses **incurred and filed prior to July 1, 2011,**
91 to cure and relieve the effects of the injury or disability of an injured employee

92 in the employ of an uninsured employer, or in the case of death of an employee
93 in the employ of an uninsured employer, funds from the second injury fund may
94 be withdrawn to cover fair, reasonable, and necessary expenses **incurred and**
95 **filed prior to July 1, 2011**, in the manner required in sections 287.240 and
96 287.241. In defense of claims arising under this subsection, the treasurer of the
97 state of Missouri, as custodian of the second injury fund, shall have the same
98 defenses to such claims as would the uninsured employer. Any funds received by
99 the employee or the employee's dependents, through civil or other action, must
100 go towards reimbursement of the second injury fund, for all payments made to the
101 employee, the employee's dependents, or paid on the employee's behalf, from the
102 second injury fund pursuant to this subsection. The office of the attorney general
103 of the state of Missouri shall bring suit in the circuit court of the county in which
104 the accident occurred against any employer not covered by this chapter as
105 required in section 287.280.

106 6. Every [three years] **year** the second injury fund shall have an actuarial
107 study made to determine the solvency of the fund **taking into consideration**
108 **any existing balance carried forward from a previous year**, appropriate
109 funding level of the fund, and forecasted expenditures from the fund. The first
110 actuarial study shall be completed prior to July 1, [1988] **2012**. The expenses of
111 such actuarial studies shall be paid out of the fund for the support of the division
112 of workers' compensation.

113 7. The director of the division of workers' compensation shall maintain the
114 financial data and records concerning the fund for the support of the division of
115 workers' compensation and the second injury fund. The division shall also
116 compile and report data on claims made pursuant to subsection 9 of this
117 section. The attorney general shall provide all necessary information to the
118 division for this purpose.

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

121 9. Any employee who at the time a compensable work-related injury is
122 sustained **prior and filed prior to July 1, 2011**, is employed by more than one
123 employer, the employer for whom the employee was working when the injury was
124 sustained shall be responsible for wage loss benefits applicable only to the
125 earnings in that employer's employment and the injured employee shall be
126 entitled to file a claim against the second injury fund for any additional wage loss
127 benefits attributed to loss of earnings from the employment or employments

128 where the injury did not occur, up to the maximum weekly benefit less those
129 benefits paid by the employer in whose employment the employee sustained the
130 injury. The employee shall be entitled to a total benefit based on the total
131 average weekly wage of such employee computed according to subsection 8 of
132 section 287.250. The employee shall not be entitled to a greater rate of
133 compensation than allowed by law on the date of the injury. The employer for
134 whom the employee was working where the injury was sustained shall be
135 responsible for all medical costs incurred in regard to that injury.

136 **10. The division shall pay any liabilities of the fund in the**
137 **following priority:**

138 **(1) Expenses related to the legal defense of the fund, under**
139 **subsection 2 of this section;**

140 **(2) Permanent total disability awards in the order in which such**
141 **claims are settled or finally adjudicated;**

142 **(3) Permanent partial disability awards in the order in which**
143 **such claims are settled or finally adjudicated;**

144 **(4) Medical expense incurred prior to July 1, 2011, under**
145 **subsection 5 of this section.**

146 **Such liabilities shall be paid to the extent the fund has a positive**
147 **balance. Any unpaid amounts shall remain an ongoing liability of the**
148 **fund until satisfied. No interest shall accrue on any outstanding**
149 **liabilities of the fund.**

Section B. Because of the need to provide security for injured workers and
2 their employers and protect the solvency of the second injury fund, section A of
3 this act is deemed necessary for the immediate preservation of the public health,
4 welfare, peace and safety, and is hereby declared to be an emergency act within
5 the meaning of the constitution, and section A of this act shall be in full force and
6 effect upon its passage and approval.

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