

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend _____ Bill No. _____, Page _____, Section _____, Line _____,

2 by inserting immediately after said line the following:

3 "287.220. 1. All cases of permanent disability where there

4 has been previous disability shall be compensated as herein

5 provided. Compensation shall be computed on the basis of the

6 average earnings at the time of the last injury. If any employee

7 who has a preexisting permanent partial disability whether from

8 compensable injury or otherwise, of such seriousness as to

9 constitute a hindrance or obstacle to employment or to obtaining

10 reemployment if the employee becomes unemployed, and the

11 preexisting permanent partial disability, if a body as a whole

12 injury, equals a minimum of fifty weeks of compensation or, if a

13 major extremity injury only, equals a minimum of fifteen percent

14 permanent partial disability, according to the medical standards

15 that are used in determining such compensation, receives a

16 subsequent compensable injury resulting in additional permanent

17 partial disability so that the degree or percentage of

18 disability, in an amount equal to a minimum of fifty weeks

19 compensation, if a body as a whole injury or, if a major

20 extremity injury only, equals a minimum of fifteen percent

21 permanent partial disability, caused by the combined disabilities

22 is substantially greater than that which would have resulted from

1 the last injury, considered alone and of itself, and if the
2 employee is entitled to receive compensation on the basis of the
3 combined disabilities, the employer at the time of the last
4 injury shall be liable only for the degree or percentage of
5 disability which would have resulted from the last injury had
6 there been no preexisting disability. After the compensation
7 liability of the employer for the last injury, considered alone,
8 has been determined by an administrative law judge or the
9 commission, the degree or percentage of employee's disability
10 that is attributable to all injuries or conditions existing at
11 the time the last injury was sustained shall then be determined
12 by that administrative law judge or by the commission and the
13 degree or percentage of disability which existed prior to the
14 last injury plus the disability resulting from the last injury,
15 if any, considered alone, shall be deducted from the combined
16 disability, and compensation for the balance, if any, shall be
17 paid out of a special fund known as the second injury fund,
18 hereinafter provided for. If the previous disability or
19 disabilities, whether from compensable injury or otherwise, and
20 the last injury together result in total and permanent
21 disability, the minimum standards under this subsection for a
22 body as a whole injury or a major extremity injury shall not
23 apply and the employer at the time of the last injury shall be
24 liable only for the disability resulting from the last injury
25 considered alone and of itself; except that if the compensation
26 for which the employer at the time of the last injury is liable
27 is less than the compensation provided in this chapter for
28 permanent total disability, then in addition to the compensation
29 for which the employer is liable and after the completion of

1 payment of the compensation by the employer, the employee shall
2 be paid the remainder of the compensation that would be due for
3 permanent total disability under section 287.200 out of a special
4 fund known as the "Second Injury Fund" hereby created exclusively
5 for the purposes as in this section provided and for special
6 weekly benefits in rehabilitation cases as provided in section
7 287.141. Maintenance of the second injury fund shall be as
8 provided by section 287.710. The state treasurer shall be the
9 custodian of the second injury fund which shall be deposited the
10 same as are state funds and any interest accruing thereon shall
11 be added thereto. The fund shall be subject to audit the same as
12 state funds and accounts and shall be protected by the general
13 bond given by the state treasurer. Upon the requisition of the
14 director of the division of workers' compensation, warrants on
15 the state treasurer for the payment of all amounts payable for
16 compensation and benefits out of the second injury fund shall be
17 issued.

18 2. In all cases in which a recovery against the second
19 injury fund is sought for permanent partial disability, permanent
20 total disability, or death, the state treasurer as custodian
21 thereof shall be named as a party, and shall be entitled to
22 defend against the claim. The state treasurer, with the advice
23 and consent of the attorney general of Missouri, may enter into
24 compromise settlements as contemplated by section 287.390, or
25 agreed statements of fact that would affect the second injury
26 fund. All awards for permanent partial disability, permanent
27 total disability, or death affecting the second injury fund shall
28 be subject to the provisions of this chapter governing review and
29 appeal. For all claims filed against the second injury fund on

1 or after July 1, 1994, the attorney general shall use assistant
2 attorneys general except in circumstances where an actual or
3 potential conflict of interest exists, to provide legal services
4 as may be required in all claims made for recovery against the
5 fund. Any legal expenses incurred by the attorney general's
6 office in the handling of such claims, including, but not limited
7 to, medical examination fees, expert witness fees, court reporter
8 expenses, travel costs, and related legal expenses shall be paid
9 by the fund.

10 Effective July 1, 1993, the payment of such legal expenses shall
11 be contingent upon annual appropriations made by the general
12 assembly, from the fund, to the attorney general's office for
13 this specific purpose.

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

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

22 5. If an employer fails to insure or self-insure as
23 required in section 287.280, funds from the second injury fund
24 may be withdrawn to cover the fair, reasonable, and necessary
25 expenses to cure and relieve the effects of the injury or
26 disability of an injured employee in the employ of an uninsured
27 employer, or in the case of death of an employee in the employ of
28 an uninsured employer, funds from the second injury fund may be
29 withdrawn to cover fair, reasonable, and necessary expenses in

1 the manner required in sections 287.240 and 287.241. In defense
2 of claims arising under this subsection, the treasurer of the
3 state of Missouri, as custodian of the second injury fund, shall
4 have the same defenses to such claims as would the uninsured
5 employer. Any funds received by the employee or the employee's
6 dependents, through civil or other action, must go towards
7 reimbursement of the second injury fund, for all payments made to
8 the employee, the employee's dependents, or paid on the
9 employee's behalf, from the second injury fund pursuant to this
10 subsection. The office of the attorney general of the state of
11 Missouri shall bring suit in the circuit court of the county in
12 which the accident occurred against any employer not covered by
13 this chapter as required in section 287.280.

14 6. Every three years the second injury fund shall have an
15 actuarial study made to determine the solvency of the fund,
16 appropriate funding level of the fund, and forecasted
17 expenditures from the fund. The first actuarial study shall be
18 completed prior to July 1, 1988. The expenses of such actuarial
19 studies shall be paid out of the fund for the support of the
20 division of workers' compensation.

21 7. The director of the division of workers' compensation
22 shall maintain the financial data and records concerning the fund
23 for the support of the division of workers' compensation and the
24 second injury fund. The division shall also compile and report
25 data on claims made pursuant to subsection 9 of this section.
26 The attorney general shall provide all necessary information to
27 the division for this purpose.

28 8. All claims for fees and expenses filed against the
29 second injury fund and all records pertaining thereto shall be

1 open to the public.

2 9. Any employee who at the time a compensable work-related
3 injury is sustained is employed by more than one employer, the
4 employer for whom the employee was working when the injury was
5 sustained shall be responsible for wage loss benefits applicable
6 only to the earnings in that employer's employment and the
7 injured employee shall be entitled to file a claim against the
8 second injury fund for any additional wage loss benefits
9 attributed to loss of earnings from the employment or employments
10 where the injury did not occur, up to the maximum weekly benefit
11 less those benefits paid by the employer in whose employment the
12 employee sustained the injury. The employee shall be entitled to
13 a total benefit based on the total average weekly wage of such
14 employee computed according to subsection 8 of section 287.250.
15 The employee shall not be entitled to a greater rate of
16 compensation than allowed by law on the date of the injury. The
17 employer for whom the employee was working where the injury was
18 sustained shall be responsible for all medical costs incurred in
19 regard to that injury.

20 10. An employee that is employed in a sheltered workshop as
21 established in sections 205.968 to 205.972 or sections 178.900 to
22 178.960 who thereafter sustains a compensable work-related injury
23 that, when combined with the preexisting disability, results in a
24 permanent total disability as defined under this chapter shall be
25 compensated as provided in this section."; and

26 Further amend the title and enacting clause accordingly.
27