

FIRST REGULAR SESSION

# SENATE BILL NO. 665

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCOTT.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

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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Section A. Section 287.220, RSMo, is repealed and one new section  
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 shall be compensated as herein provided. Compensation shall  
3 be computed on the basis of the average earnings at the time of the last injury. If  
4 any employee who has a preexisting permanent partial disability whether from  
5 compensable injury or otherwise, of such seriousness as to constitute a hindrance  
6 or obstacle to employment or to obtaining reemployment if the employee becomes  
7 unemployed, and the preexisting permanent partial disability, if a body as a  
8 whole injury, equals a minimum of fifty weeks of compensation or, if a major  
9 extremity injury only, equals a minimum of fifteen percent permanent partial  
10 disability, according to the medical standards that are used in determining such  
11 compensation, receives a subsequent compensable injury resulting in additional  
12 permanent partial disability so that the degree or percentage of disability, in an  
13 amount equal to a minimum of fifty weeks compensation, if a body as a whole  
14 injury or, if a major extremity injury only, equals a minimum of fifteen percent  
15 permanent partial disability, caused by the combined disabilities is substantially  
16 greater than that which would have resulted from the last injury, considered  
17 alone and of itself, and if the employee is entitled to receive compensation on the  
18 basis of the combined disabilities, the employer at the time of the last injury shall  
19 be liable only for the degree or percentage of disability which would have resulted  
20 from the last injury had there been no preexisting disability. After the

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

21 compensation liability of the employer for the last injury, considered alone, has  
22 been determined by an administrative law judge or the commission, the degree  
23 or percentage of employee's disability that is attributable to all injuries or  
24 conditions existing at the time the last injury was sustained shall then be  
25 determined by that administrative law judge or by the commission and the degree  
26 or percentage of disability which existed prior to the last injury plus the disability  
27 resulting from the last injury, if any, considered alone, shall be deducted from the  
28 combined disability, and compensation for the balance, if any, shall be paid out  
29 of a special fund known as the second injury fund, hereinafter provided for. If the  
30 previous disability or disabilities, whether from compensable injury or otherwise,  
31 and the last injury together result in total and permanent disability, the  
32 minimum standards under this subsection for a body as a whole injury or a major  
33 extremity injury shall not apply and the employer at the time of the last injury  
34 shall be liable only for the disability resulting from the last injury considered  
35 alone and of itself; except that if the compensation for which the employer at the  
36 time of the last injury is liable is less than the compensation provided in this  
37 chapter for permanent total disability, then in addition to the compensation for  
38 which the employer is liable and after the completion of payment of the  
39 compensation by the employer, the employee shall be paid the remainder of the  
40 compensation that would be due for permanent total disability under section  
41 287.200 out of a special fund known as the "Second Injury Fund" hereby created  
42 exclusively for the purposes as in this section provided and for special weekly  
43 benefits in rehabilitation cases as provided in section 287.141. Maintenance of  
44 the second injury fund shall be as provided by section 287.710. The state  
45 treasurer shall be the custodian of the second injury fund which shall be  
46 deposited the same as are state funds and any interest accruing thereon shall be  
47 added thereto. The fund shall be subject to audit the same as state funds and  
48 accounts and shall be protected by the general bond given by the state  
49 treasurer. Upon the requisition of the director of the division of workers'  
50 compensation, warrants on the state treasurer for the payment of all amounts  
51 payable for compensation and benefits out of the second injury fund shall be  
52 issued.

53         2. In all cases in which a recovery against the second injury fund is  
54 sought for permanent partial disability, permanent total disability, or death, the  
55 state treasurer as custodian thereof shall be named as a party, and shall be  
56 entitled to defend against the claim. The state treasurer, with the advice and

57 consent of the attorney general of Missouri, may enter into compromise  
58 settlements as contemplated by section 287.390, or agreed statements of fact that  
59 would affect the second injury fund. All awards for permanent partial disability,  
60 permanent total disability, or death affecting the second injury fund shall be  
61 subject to the provisions of this chapter governing review and appeal. For all  
62 claims filed against the second injury fund on or after July 1, 1994, the attorney  
63 general shall use assistant attorneys general except in circumstances where an  
64 actual or potential conflict of interest exists, to provide legal services as may be  
65 required in all claims made for recovery against the fund. Any legal expenses  
66 incurred by the attorney general's office in the handling of such claims, including,  
67 but not limited to, medical examination fees, expert witness fees, court reporter  
68 expenses, travel costs, and related legal expenses shall be paid by the  
69 fund. Effective July 1, 1993, the payment of such legal expenses shall be  
70 contingent upon annual appropriations made by the general assembly, from the  
71 fund, to the attorney general's office for this specific purpose.

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

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

79           5. If an employer fails to insure or self-insure as required in section  
80 287.280, funds from the second injury fund may be withdrawn to cover the fair,  
81 reasonable, and necessary expenses to cure and relieve the effects of the injury  
82 or disability of an injured employee in the employ of an uninsured employer, or  
83 in the case of death of an employee in the employ of an uninsured employer,  
84 funds from the second injury fund may be withdrawn to cover fair, reasonable,  
85 and necessary expenses in the manner required in sections 287.240 and 287.241.  
86 In defense of claims arising under this subsection, the treasurer of the state of  
87 Missouri, as custodian of the second injury fund, shall have the same defenses to  
88 such claims as would the uninsured employer. Any funds received by the  
89 employee or the employee's dependents, through civil or other action, must go  
90 towards reimbursement of the second injury fund, for all payments made to the  
91 employee, the employee's dependents, or paid on the employee's behalf, from the  
92 second injury fund pursuant to this subsection. The office of the attorney general

93 of the state of Missouri shall bring suit in the circuit court of the county in which  
94 the accident occurred against any employer not covered by this chapter as  
95 required in section 287.280.

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

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

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

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

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