

FIRST REGULAR SESSION

HOUSE BILL NO. 788

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FISHER.

1630L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.220, 287.690, and 287.715, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation law, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.220, 287.690, and 287.715, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 287.220, 287.225, 287.690, and 287.715, to read as follows:

287.220. 1. **No claim for permanent partial disability due to an injury occurring on or after August 28, 2011, until January 1, 2015, shall be made against the second injury fund established under this section, except as provided in subsection 6 of this section. No claim shall be made against the second injury fund due to an injury occurring on or after January 1, 2015, unless the employee has a documented preexisting permanent disability with a disability rating of zero percent or higher incurred by such person while on active duty in a branch of the United States military, and thereafter the fund established in subsection 2 of this section shall be known as the "Veteran's Supplemental Compensation Fund".**

2. 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

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.

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

53 [2.] 3. In all cases in which a recovery against the second injury fund is sought for
54 permanent partial disability, permanent total disability, or death, the state treasurer as custodian
55 thereof shall be named as a party, and shall be entitled to defend against the claim. The state
56 treasurer, with the advice and consent of the attorney general of Missouri, may enter into
57 compromise settlements as contemplated by section 287.390, or agreed statements of fact that
58 would affect the second injury fund. **However, beginning August 28, 2011, until January 1,**
59 **2015, there shall be no compromise settlements contemplated by section 287.390 paid from**
60 **the second injury fund in an amount greater than forty thousand dollars.** All awards for
61 permanent partial disability, permanent total disability, or death affecting the second injury fund
62 shall be subject to the provisions of this chapter governing review and appeal. For all claims
63 filed against the second injury fund on or after July 1, 1994, the attorney general shall use
64 assistant attorneys general except in circumstances where an actual or potential conflict of
65 interest exists, to provide legal services as may be required in all claims made for recovery
66 against the fund. Any legal expenses incurred by the attorney general's office in the handling of
67 such claims, including, but not limited to, medical examination fees, expert witness fees, court
68 reporter expenses, travel costs, and related legal expenses shall be paid by the fund. Effective
69 July 1, 1993, the payment of such legal expenses shall be contingent upon annual appropriations
70 made by the general assembly, from the fund, to the attorney general's office for this specific
71 purpose.

72 [3.] 4. If more than one injury in the same employment causes concurrent temporary
73 disabilities, compensation shall be payable only for the longest and largest paying disability.

74 [4.] 5. If more than one injury in the same employment causes concurrent and
75 consecutive permanent partial disability, compensation payments for each subsequent disability
76 shall not begin until the end of the compensation period of the prior disability.

77 [5.] 6. If an employer fails to insure or self-insure as required in section 287.280, funds
78 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
79 expenses to cure and relieve the effects of the injury or disability of an injured employee in the
80 employ of an uninsured employer, or in the case of death of an employee in the employ of an
81 uninsured employer, funds from the second injury fund may be withdrawn to cover fair,
82 reasonable, and necessary expenses in the manner required in sections 287.240 and 287.241. In
83 defense of claims arising under this subsection, the treasurer of the state of Missouri, as
84 custodian of the second injury fund, shall have the same defenses to such claims as would the
85 uninsured employer. Any funds received by the employee or the employee's dependents, through
86 civil or other action, must go towards reimbursement of the second injury fund, for all payments
87 made to the employee, the employee's dependents, or paid on the employee's behalf, from the
88 second injury fund pursuant to this subsection. The office of the attorney general of the state of

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

91 [6.] 7. Every three years the second injury fund shall have an actuarial study made to
92 determine the solvency of the fund, appropriate funding level of the fund, and forecasted
93 expenditures from the fund. The first actuarial study shall be completed prior to [July 1, 1988]
94 **July 1, 2012**. The expenses of such actuarial studies shall be paid out of the fund for the support
95 of the division of workers' compensation.

96 [7.] 8. The director of the division of workers' compensation shall maintain the financial
97 data and records concerning the fund for the support of the division of workers' compensation
98 and the second injury fund. The division shall also compile and report data on claims made
99 pursuant to subsection 9 of this section. The attorney general shall provide all necessary
100 information to the division for this purpose.

101 [8.] 9. All claims for fees and expenses filed against the second injury fund and all
102 records pertaining thereto shall be open to the public.

103 [9.] 10. Any employee who at the time a compensable work-related injury is sustained
104 is employed by more than one employer, the employer for whom the employee was working
105 when the injury was sustained shall be responsible for wage loss benefits applicable only to the
106 earnings in that employer's employment and the injured employee shall be entitled to file a claim
107 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
108 from the employment or employments where the injury did not occur, up to the maximum
109 weekly benefit less those benefits paid by the employer in whose employment the employee
110 sustained the injury. The employee shall be entitled to a total benefit based on the total average
111 weekly wage of such employee computed according to subsection 8 of section 287.250. The
112 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
113 of the injury. The employer for whom the employee was working where the injury was sustained
114 shall be responsible for all medical costs incurred in regard to that injury.

115 **11. (1) Beginning August 28, 2011, until January 1, 2015, claims against the second**
116 **injury fund for disability shall only be compensated as provided for in this subsection and**
117 **subsections 12 to 14 of this section and section 287.200. Claims for disability against the**
118 **second injury fund shall be compensable where an employee has a medically documented**
119 **preexisting disability as a direct result of active military duty or as a result of a preexisting**
120 **permanent partial disability from a compensable injury as defined in section 287.020. To**
121 **be compensable from the second injury fund, there shall be a medically documented**
122 **preexisting disability resulting from active military duty or a preexisting permanent partial**
123 **disability from a compensable injury as defined in section 287.020, which equals a**
124 **minimum of fifty weeks of compensation, or if a major extremity injury only, equals a**

125 minimum of fifteen percent permanent partial disability according to the medical
126 standards that are used in determining such compensation, and thereafter sustains a
127 subsequent work-related injury that, when combined with the preexisting military
128 disability or preexisting permanent partial disability from a compensable injury as defined
129 in section 287.020, results in permanent total disability as defined in section 287.020,
130 compensation for such permanent total disability shall be paid as provided herein.

131 (2) If the preexisting permanent partial disability from a compensable injury as
132 defined in section 287.020 or a disability resulting from active military duty and the
133 subsequent work-related injury that is found to be compensable as defined in section
134 287.020 together result in total and permanent disability, then the employer at the time of
135 the subsequent work-related injury shall be liable only for the disability resulting from the
136 subsequent work-related injury considered alone and of itself; except that if the
137 compensation for which the employer at the time of the subsequent work-related injury is
138 liable is less than the compensation provided in this chapter for permanent total disability,
139 then in addition to the compensation for which the employer is liable and after the
140 completion of payment of the compensation by the employer, the employee shall be paid
141 the remainder of the compensation that would be due for the permanent total disability
142 under section 287.200 out of the second injury fund.

143 (3) Maintenance of the second injury fund shall be provided by section 287.710.
144 The state treasurer shall be the custodian of the fund which shall be deposited the same as
145 are the state funds and any interest accruing thereon shall be added thereto. The funds
146 shall be subject to audit the same as state funds and accounts and shall be protected by the
147 general bond given by the state treasurer.

148 12. (1) In all cases in which a recovery against the fund is sought for permanent
149 total disability, the employee shall file a claim naming the treasurer of the state of Missouri
150 as custodian of the fund as a party and the employee shall submit to appropriate vocational
151 testing, a vocational rehabilitation assessment, and an independent medical examination
152 scheduled by the fund. Results of any such vocational testing, vocational rehabilitation
153 assessment, or independent medical examination shall be admissible at any administrative
154 or judicial proceeding where the claimant is a party.

155 (2) Compensation for benefits payable under this section, shall be based on the
156 average weekly wage calculated under section 287.250 as of the date of the injury.

157 13. If an employer fails to insure or self-insure as required in section 287.280, funds
158 from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary
159 expenses to cure and relieve the effects of the injury or of an injured employee in the
160 employ of an uninsured employer, or in the case of death of an employee in the employ of

161 **an uninsured employer, funds from the second injury fund may be withdrawn to cover**
162 **fair, reasonable, and necessary medical expenses. In defense of claims arising under this**
163 **subsection, the treasurer of the state of Missouri, as custodian of the fund, shall have the**
164 **same defenses to such claims as would the uninsured employer. The treasurer of the state**
165 **of Missouri shall be permitted to present any evidence with respect to the audit findings**
166 **on the medical charges. Any moneys received by the employee or the employee's**
167 **dependents through civil or other action against the uninsured employer as a result of the**
168 **injury may go toward reimbursement of the second injury fund for all payments made to**
169 **the employee, the employee's dependents, or paid on the employee's behalf from the fund**
170 **under this subsection. The office of the attorney general of the state of Missouri shall bring**
171 **suit in the circuit court of the county in which the accident occurred against the employer**
172 **not covered by this chapter as required in section 287.280.**

173 **14. All claims for permanent total disability shall be determined in accordance with**
174 **the facts. When an injured employee receives an award for permanent total disability but**
175 **by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is**
176 **restored to his regular work or its equivalent, the life payment mentioned in subsection 1**
177 **of this section shall be suspended during the time in which the employee is restored to his**
178 **regular work or its equivalent. The employer and the division shall keep the file open in**
179 **the case during the lifetime of any injured employee who has received an award of**
180 **permanent total disability. In any case where the life payment is suspended under this**
181 **subsection, the commission may at reasonable times review the case and either the**
182 **employee or the employer may request an informal conference with the commission**
183 **relative to the resumption of the employee's weekly life payment in the case.**

287.225. No compensation shall be payable from the second injury fund if the
2 **employee elects to pursue compensation under the workers' compensation law of another**
3 **state with jurisdiction over the employees' injury or accident or occupational disease.**

287.690. [1. Prior to December 31, 1993,] **Beginning January 1, 2012,** for the purpose
2 of providing for the expense of administering this chapter [and for the purpose set out in
3 subsection 2 of this section], every person, partnership, association, corporation, whether
4 organized under the laws of this or any other state or country, the state of Missouri, including any
5 of its departments, divisions, agencies, commissions, and boards or any political subdivisions
6 of the state who self-insure or hold themselves out to be any part self-insured, company, mutual
7 company, the parties to any interindemnity contract, or other plan or scheme, and every other
8 insurance carrier, insuring employers in this state against liability for personal injuries to their
9 employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter,
10 tax upon the net deposits, net premiums or net assessments received, whether in cash or notes

11 in this state, or on account of business done in this state, for such insurance in this state at the
12 **annual** rate of **no less than one-half of one percent and no greater than** two percent in lieu
13 of all [other] **premium** taxes on such net deposits, net premiums or net assessments, which
14 amount of taxes shall be assessed and collected as herein provided. Beginning October 31,
15 [1993] **2011**, and every year thereafter, the director of the division of workers' compensation
16 shall estimate the amount of revenue required to administer this chapter and the **division** director
17 shall determine the rate of tax to be paid in the following calendar year pursuant to this section
18 commencing with the calendar year beginning on January 1, [1994] **2012**. If the balance of the
19 fund [estimated to be] on hand on [December thirty-first] **July first** of the year each tax rate
20 determination is made **on October thirty-first** is less than one hundred ten percent of the
21 previous year's expenses plus any additional revenue required due to new statutory requirements
22 given to the division by the general assembly, then the **division** director shall impose a tax not
23 to exceed two percent in lieu of all other taxes on net deposits, net premiums or net assessments,
24 rounded up to the nearest one-half of a percentage point, which amount of taxes shall be assessed
25 and collected as herein provided. The net premium equivalent for individual self-insured
26 employers and any group of political subdivisions of this state qualified to self-insure their
27 liability pursuant to this chapter as authorized by section 537.620 shall be based on average rate
28 classifications calculated by the department of insurance, **financial institutions and**
29 **professional registration** as taken from premium rates filed by the twenty insurance companies
30 providing the greatest volume of workers' compensation insurance coverage in this state. For
31 employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such
32 group of employers in accordance with subsection 2 of section 287.280 shall be the net premium
33 equivalent. Every entity required to pay the tax imposed pursuant to this section and section
34 287.730 shall be notified by the division of workers' compensation within ten calendar days of
35 the date of the determination of the rate of tax to be imposed for the following year. Net
36 premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross
37 assessments less canceled or returned premiums, premium deposits or assessments and less
38 dividends or savings, actually paid or credited.

39 [2. After January 1, 1994, the director of the division shall make one or more loans to
40 the Missouri employers mutual insurance company in an amount not to exceed an aggregate
41 amount of five million dollars from the fund maintained to administer this chapter for start-up
42 funding and initial capitalization of the company. The board of the company shall make
43 application to the director for the loans, stating the amount to be loaned to the company. The
44 loans shall be for a term of five years and, at the time the application for such loans is approved
45 by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as
46 calculated by the state treasurer pursuant to section 30.758, RSMo.]

287.715. 1. For the purpose of providing for revenue for the second injury fund, every
2 authorized self-insurer, and every workers' compensation policyholder insured pursuant to the
3 provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with
4 the provisions of this section. The annual surcharge imposed under this section shall apply to
5 all workers' compensation insurance policies and self-insurance coverages which are written or
6 renewed on or after April 26, 1988, including the state of Missouri, including any of its
7 departments, divisions, agencies, commissions, and boards or any political subdivisions of the
8 state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any
9 law to the contrary, the surcharge imposed pursuant to this section shall not apply to any
10 reinsurance or retrocessional transaction.

11 2. Beginning October 31, [2005] **2011**, and each year thereafter, the director of the
12 division of workers' compensation shall estimate the amount of benefits payable from the second
13 injury fund during the following calendar year and shall calculate the total amount of the annual
14 surcharge to be imposed during the following calendar year upon all workers' compensation
15 policyholders and authorized self-insurers. The amount of the annual surcharge percentage to
16 be imposed upon each policyholder and self-insured for the following calendar year commencing
17 with the calendar year beginning on January 1, [2006] **2012**, shall be set at and calculated against
18 a percentage, not to exceed three percent, of the policyholder's or self-insured's workers'
19 compensation net deposits, net premiums, or net assessments for the previous policy year,
20 rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible,
21 one hundred ten percent of the moneys to be paid from the second injury fund in the following
22 calendar year, less any moneys contained in the fund at the end of the previous [calendar] **fiscal**
23 year. All policyholders and self-insurers shall be notified by the division of workers'
24 compensation within ten calendar days of the determination of the surcharge percent to be
25 imposed for, and paid in, the following calendar year. The net premium equivalent for individual
26 self-insured employers and any group of political subdivisions of this state qualified to
27 self-insure their liability pursuant to this chapter as authorized by section 537.620 shall be based
28 on average rate classifications calculated by the department of insurance, **financial institutions**
29 **and professional registration** as taken from premium rates filed by the twenty insurance
30 companies providing the greatest volume of workers' compensation insurance coverage in this
31 state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed
32 by such group of employers in accordance with subsection 2 of section 287.280 shall be the net
33 premium equivalent. The **division** director may advance [funds] **moneys** from the workers'
34 compensation fund to the second injury fund if surcharge collections prove to be insufficient.
35 **The outstanding total of moneys advanced by the division director from the workers'**
36 **compensation fund to the second injury fund shall not exceed thirty-three and one-third**

37 **percent of the total amount of the annual surcharge as calculated in this section to be**
38 **imposed in the year moneys are advanced to the second injury fund. No additional**
39 **advance from the workers' compensation fund to the second injury fund shall be made by**
40 **the director until the previous advance has been reimbursed in full.** Any [funds] moneys
41 advanced from the workers' compensation fund to the second injury fund [must] **shall** be
42 reimbursed by the second injury fund no later than December thirty-first of the **fifth** year
43 following the advance. The surcharge shall be collected from policyholders by each insurer at
44 the same time and in the same manner that the premium is collected, but no insurer or its agent
45 shall be entitled to any portion of the surcharge as a fee or commission for its collection. The
46 surcharge is not subject to any taxes, licenses or fees.

47 3. All surcharge amounts imposed by this section shall be deposited to the credit of the
48 second injury fund.

49 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
50 insurers shall pay the amounts not later than the thirtieth day of the month following the end of
51 the quarter in which the amount is received from policyholders. If the director of the division
52 of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any
53 year for the following year, any increase in the surcharge ultimately set by the director shall not
54 be effective for any calendar quarter beginning less than sixty days from the date the director
55 makes such determination.

56 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer
57 fails to make timely transfer to the division of surcharges actually collected from policyholders,
58 as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or
59 untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties
60 assessed under this subsection shall be collected in a civil action by a summary proceeding
61 brought by the director of the division of workers' compensation.

62 **6. Funds collected under the provisions of this section shall be the sole funding**
63 **source of the second injury fund.**

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