

FIRST REGULAR SESSION

# HOUSE BILL NO. 893

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RICHARDSON (Sponsor), BARNES, COLONA, JONES (117), WEBBER, DIEHL, MOLENDORP, DIECKHAUS, FISHER, LONG, TALBOY, FLANIGAN, ELMER, SCHARNHORST, PARKINSON, ZERR, FRAKER, COOKSON, CRAWFORD, WHITE AND SCHOELLER (Co-sponsors).

2046L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 287.220 and 287.715, RSMo, and to enact in lieu thereof two new sections relating to the second injury fund, with an emergency clause.

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

Section A. Sections 287.220 and 287.715, RSMo, are repealed and two new sections  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

287.220. 1. All cases of permanent disability where there has been previous disability,  
2 **and for all claims for injuries occurring prior to July 1, 2011**, shall be compensated as herein  
3 provided. Compensation shall be computed on the basis of the average earnings at the time of  
4 the last injury. If any employee who has a preexisting permanent partial disability whether from  
5 compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to  
6 employment or to obtaining reemployment if the employee becomes unemployed, and the  
7 preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty  
8 weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent  
9 permanent partial disability, according to the medical standards that are used in determining such  
10 compensation, receives a subsequent compensable injury resulting in additional permanent  
11 partial disability so that the degree or percentage of disability, in an amount equal to a minimum  
12 of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only,  
13 equals a minimum of fifteen percent permanent partial disability, caused by the combined  
14 disabilities is substantially greater than that which would have resulted from the last injury,  
15 considered alone and of itself, and if the employee is entitled to receive compensation on 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 basis of the combined disabilities, the employer at the time of the last injury shall be liable only  
17 for the degree or percentage of disability which would have resulted from the last injury had  
18 there been no preexisting disability. After the compensation liability of the employer for the last  
19 injury, considered alone, has been determined by an administrative law judge or the commission,  
20 the degree or percentage of employee's disability that is attributable to all injuries or conditions  
21 existing at the time the last injury was sustained shall then be determined by that administrative  
22 law judge or by the commission and the degree or percentage of disability which existed prior  
23 to the last injury plus the disability resulting from the last injury, if any, considered alone, shall  
24 be deducted from the combined disability, and compensation for the balance, if any, shall be paid  
25 out of a special fund known as the second injury fund, hereinafter provided for. If the previous  
26 disability or disabilities, whether from compensable injury or otherwise, and the last injury  
27 together result in total and permanent disability, the minimum standards under this subsection  
28 for a body as a whole injury or a major extremity injury shall not apply and the employer at the  
29 time of the last injury shall be liable only for the disability resulting from the last injury  
30 considered alone and of itself; except that if the compensation for which the employer at the time  
31 of the last injury is liable is less than the compensation provided in this chapter for permanent  
32 total disability, then in addition to the compensation for which the employer is liable and after  
33 the completion of payment of the compensation by the employer, the employee shall be paid the  
34 remainder of the compensation that would be due for permanent total disability under section  
35 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for  
36 the purposes as in this section provided and for special weekly benefits in rehabilitation cases  
37 as provided in section 287.141. Maintenance of the second injury fund shall be as provided by  
38 section 287.710. The state treasurer shall be the custodian of the second injury fund which shall  
39 be deposited the same as are state funds and any interest accruing thereon shall be added thereto.  
40 The fund shall be subject to audit the same as state funds and accounts and shall be protected by  
41 the general bond given by the state treasurer. Upon the requisition of the director of the division  
42 of workers' compensation, warrants on the state treasurer for the payment of all amounts payable  
43 for 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, may enter into compromise  
48 settlements as contemplated by section 287.390 **in any amount not to exceed the total sum of**  
49 **one hundred weeks of the employee's total average weekly wage as of the date of the injury,**  
50 or agreed statements of fact that would affect the second injury fund. **The state treasurer, with**  
51 **the advice and consent of the attorney general of Missouri, may enter into compromise**

52 **settlements with dependents of claimants, whether finally adjudicated or not, arising from**  
53 **the Missouri Supreme Court's decision in Schoemehl v. Treasurer of Missouri, 217 S.W.3d**  
54 **900 (Mo.2007).** All awards for permanent partial disability, permanent total disability, or death  
55 affecting the second injury fund shall be subject to the provisions of this chapter governing  
56 review and appeal. For all claims filed against the second injury fund on or after July 1, 1994,  
57 the attorney general shall use assistant attorneys general except in circumstances where an actual  
58 or potential conflict of interest exists, to provide legal services as may be required in all claims  
59 made for recovery against the fund. Any legal expenses incurred by the attorney general's office  
60 in the handling of such claims, including, but not limited to, medical examination fees, expert  
61 witness fees, court reporter expenses, travel costs, and related legal expenses shall be paid by the  
62 fund. Effective July 1, 1993, the payment of such legal expenses shall be contingent upon annual  
63 appropriations made by the general assembly, from the fund, to the attorney general's office for  
64 this specific purpose.

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

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

70 5. If an employer fails to insure or self-insure as required in section 287.280, funds from  
71 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses  
72 **incurred relating to claims for injuries occurring prior to July 1, 2011,** to cure and relieve  
73 the effects of the injury or disability of an injured employee in the employ of an uninsured  
74 employer, or in the case of death of an employee in the employ of an uninsured employer, funds  
75 from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses  
76 **incurred relating to claims for injuries occurring prior to July 1, 2011,** in the manner  
77 required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the  
78 treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same  
79 defenses to such claims as would the uninsured employer. Any funds received by the employee  
80 or the employee's dependents, through civil or other action, must go towards reimbursement of  
81 the second injury fund, for all payments made to the employee, the employee's dependents, or  
82 paid on the employee's behalf, from the second injury fund pursuant to this subsection. The  
83 office of the attorney general of the state of Missouri shall bring suit in the circuit court of the  
84 county in which the accident occurred against any employer not covered by this chapter as  
85 required in section 287.280.

86 6. Every [three years] **year, until such time the director finds liabilities of the fund**  
87 **will end within the year,** the second injury fund shall have an actuarial study made to determine

88 the solvency of the fund **taking into consideration any existing balance carried forward from**  
89 **a previous year**, appropriate funding level of the fund, and forecasted expenditures from the  
90 fund. The first actuarial study shall be completed prior to July 1, [1988] **2012**. The expenses of  
91 such actuarial studies shall be paid out of the fund for the support of the division of workers'  
92 compensation.

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

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

100 9. Any employee who at the time a compensable work-related injury is sustained **prior**  
101 **to July 1, 2011**, is employed by more than one employer, the employer for whom the employee  
102 was working when the injury was sustained shall be responsible for wage loss benefits applicable  
103 only to the earnings in that employer's employment and the injured employee shall be entitled  
104 to file a claim against the second injury fund for any additional wage loss benefits attributed to  
105 loss of earnings from the employment or employments where the injury did not occur, up to the  
106 maximum weekly benefit less those benefits paid by the employer in whose employment the  
107 employee sustained the injury. The employee shall be entitled to a total benefit based on the total  
108 average weekly wage of such employee computed according to subsection 8 of section 287.250.  
109 The employee shall not be entitled to a greater rate of compensation than allowed by law on the  
110 date of the injury. The employer for whom the employee was working where the injury was  
111 sustained shall be responsible for all medical costs incurred in regard to that injury.

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

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

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

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

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

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

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

34 prove to be insufficient. Any funds advanced from the workers' compensation fund to the second  
35 injury fund must be reimbursed by the second injury fund no later than December thirty-first of  
36 the year following the advance. The surcharge shall be collected from policyholders by each  
37 insurer at the same time and in the same manner that the premium is collected, but no insurer or  
38 its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection.  
39 The surcharge is not subject to any taxes, licenses or fees.

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

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

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

55         **6. Notwithstanding subsection 2 of this section to the contrary, on the effective date**  
56 **of this section, the division director shall transfer adequate funds from the workers'**  
57 **compensation fund to the second injury fund to ensure solvency of the second injury fund**  
58 **for the remainder of the fiscal year. Such transfer shall not be of such size to jeopardize**  
59 **the solvency of the workers' compensation fund. Such funds shall be repaid to the**  
60 **workers' compensation fund on or before July 1, 2012, and shall be collected with a**  
61 **supplemental surcharge during fiscal year 2013, and shall be calculated in like manner as**  
62 **authorized in subsection 2 of this section.**

63         **7. In order to maintain the fiscal solvency of the second injury fund, should the**  
64 **anticipated collections authorized in subsection 2 of this section fail to be sufficient to meet**  
65 **its current and anticipated legal obligations, provide funds to settle cases, and provide**  
66 **funds for the administration of the fund for the following calendar year, the director of the**  
67 **division of workers' compensation, at the time of estimating the amounts of benefits**  
68 **payable from the second injury fund under subsection 2 of this section, shall determine the**  
69 **amount of revenue so required. Notwithstanding subsection 2 of this section to the**

70 **contrary, such necessary funds as determined by the director shall be collected with a**  
71 **supplemental surcharge calculated in like manner as authorized in subsection 2 of this**  
72 **section.**

73 **8. Beginning on the effective date of this section, the attorney general shall reduce**  
74 **staff defending the second injury fund in proportion to the number of pending cases.**

75 **9. Funds collected under the provisions of this chapter shall be the sole funding**  
76 **source of the second injury fund.**

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