

Senate Amendment to
House File 2411

H-8393

1 Amend House File 2411, as passed by the House, as follows:

2 1. Page 1, after line 18 by inserting:

3 <Sec. _____. Section 85.27, subsection 5, Code 2022, is
4 amended to read as follows:

5 5. a. When an artificial member or orthopedic appliance,
6 whether or not previously furnished by the employer, is damaged
7 or made unusable by circumstances arising out of and in the
8 course of employment other than through ordinary wear and tear,
9 the employer shall repair or replace it. When any crutch,
10 artificial member or appliance, whether or not previously
11 furnished by the employer, either is damaged or made unusable
12 in conjunction with a personal injury entitling the employee to
13 disability benefits or services as provided by [this section](#),
14 or is damaged in connection with employee actions taken which
15 avoid such personal injury, the employer shall repair or
16 replace it.

17 b. Subject to paragraph "a" but notwithstanding any other
18 provision of this section, an employer shall not be required
19 to provide for the repair or replacement of an employee's
20 permanent prosthetic device if the employee has an account
21 credited to the employee pursuant to section 85.65, subsection
22 2, in relation to that permanent prosthetic device.

23 Sec. _____. Section 85.35, Code 2022, is amended by adding the
24 following new subsection:

25 NEW SUBSECTION. 7A. a. If an injury relating to a claim
26 results in the injured worker needing a medically necessary
27 permanent prosthetic device or an alteration of an existing
28 medically necessary permanent prosthetic device, a settlement
29 pursuant to this section must describe the medically necessary
30 permanent prosthetic device and identify which portion of
31 the settlement proceeds are for the purpose of covering the
32 estimated cost of future repair or replacement of the device.

33 b. Upon the approval of a settlement by the workers'
34 compensation commissioner, moneys identified for the purpose
35 of covering the cost of future repair or replacement of a

1 permanent prosthetic device shall be paid to the treasurer
2 of state as the custodian of the second injury fund for
3 administration pursuant to section 85.65, subsection 2, section
4 85.66, and section 85.67A.

5 *c.* Notwithstanding any other provision of this chapter,
6 moneys identified for the purpose of covering the estimated
7 cost of future repair or replacement of a permanent prosthetic
8 device shall not be used to calculate an injured worker's
9 compensation schedule.

10 Sec. _____. Section 85.45, Code 2022, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 4. When commuting future payments pursuant
13 to this section, if the claim for workers' compensation
14 benefits was related to an injury that resulted in the injured
15 worker needing a medically necessary permanent prosthetic
16 device or an alteration of an existing medically necessary
17 permanent prosthetic device, a portion of the lump sum payment
18 must be designated for the purpose of covering the estimated
19 cost of repair or replacement of the permanent prosthetic
20 device. Moneys identified pursuant to this subsection shall
21 be paid to the treasurer of state as custodian of the second
22 injury fund for administration pursuant to section 85.65,
23 subsection 2, section 85.66, and section 85.67A.

24 Sec. _____. Section 85.48, Code 2022, is amended to read as
25 follows:

26 **85.48 Partial commutation.**

27 1. When partial commutation is ordered, the workers'
28 compensation commissioner shall fix the lump sum to be paid
29 at an amount which will equal the future payments for the
30 period commuted, capitalized at their present value upon the
31 basis of interest at the rate provided in [section 535.3](#) for
32 court judgments and decrees. Provisions shall be made for the
33 payment of weekly compensation not included in the commutation
34 with all remaining payments to be paid over the same period
35 of time as though the commutation had not been made by either

1 eliminating weekly payments from the first or last part of the
2 payment period or by a pro rata reduction in the weekly benefit
3 amount over the entire payment period.

4 2. When commuting future payments pursuant to this
5 section, if the claim for workers' compensation benefits was
6 related to an injury that resulted in the injured worker
7 needing a medically necessary permanent prosthetic device or
8 an alteration of an existing medically necessary permanent
9 prosthetic device, a portion of the lump sum payment must be
10 designated for the purposes of covering the estimated cost
11 of repair or replacement of the permanent prosthetic device.
12 Moneys identified pursuant to this subsection shall be paid to
13 the treasurer of state as custodian of the second injury fund
14 for administration pursuant to section 85.65, subsection 2,
15 section 85.66, and section 85.67A.

16 Sec. _____. Section 85.61, Code 2022, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 01. "*Alteration*" means a material change
19 to a permanent prosthetic device that is necessary due to an
20 employee's injury, without which would not allow the injured
21 employee use of the prosthetic device as effectively as prior
22 to the injury.

23 Sec. _____. Section 85.65, Code 2022, is amended to read as
24 follows:

25 **85.65 Payments to second injury fund.**

26 1. The employer, or, if insured, the insurance carrier in
27 each case of compensable injury causing death, shall pay to
28 the treasurer of state for the second injury fund the sum of
29 twelve thousand dollars in a case where there are dependents
30 and forty-five thousand dollars in a case where there are no
31 dependents. The payment shall be made at the time compensation
32 payments are begun, or at the time the burial expenses are
33 paid in a case where there are no dependents. However, the
34 payments shall be required only in cases of injury resulting in
35 death coming within the purview of [this chapter](#) and occurring

1 after July 1, 1978. These payments shall be in addition to
2 any payments of compensation to injured employees or their
3 dependents, or of burial expenses as provided in [this chapter](#).

4 2. a. The employer, or, if insured, the insurance carrier
5 shall pay to the treasurer of state for the second injury
6 fund the sum of moneys designated for the purpose of covering
7 the estimated cost of repair or replacement of a permanent
8 prosthetic device for an injured worker pursuant to section
9 85.35, 85.45, or 85.48.

10 b. (1) Upon receipt of moneys pursuant to paragraph "a",
11 the treasurer of state shall credit the employee for the full
12 amount received.

13 (2) Moneys received by the treasurer of state pursuant to
14 this paragraph for a permanent prosthetic device that was not
15 medically necessary prior to an injury shall be credited to
16 the injured worker in a new account relating to that permanent
17 prosthetic device.

18 (3) Moneys received by the treasurer of state pursuant to
19 this paragraph for an existing permanent prosthetic device that
20 requires alteration due to an injury shall be credited to the
21 employee's account relating to that prosthetic device if one
22 exists, or credited to a new account if one is not in existence
23 for that prosthetic device.

24 c. Moneys credited to an employee pursuant to this
25 subsection may only be used for the purposes designated in
26 section 85.67A and only in relation to the permanent prosthetic
27 device for which the account was created.

28 Sec. _____. Section 85.66, subsection 2, Code 2022, is amended
29 to read as follows:

30 2. The treasurer of state is charged with the conservation
31 of the assets of the second injury fund. Moneys collected in
32 the second injury fund shall be disbursed only for the purposes
33 stated in [this subchapter](#), and shall not at any time be
34 appropriated or diverted to any other use or purpose. ~~Except~~
35 ~~for reimbursements to the attorney general provided for in~~

1 ~~section 85.67, disbursements~~ Disbursements from the fund shall
2 only be paid by the treasurer of state ~~only~~ for reimbursements
3 pursuant to section 85.67, for payments pursuant to section
4 85.67A, or upon the written order of the workers' compensation
5 commissioner. The treasurer of state shall invest any surplus
6 moneys of the fund in securities which constitute legal
7 investments for state funds under the laws of this state, and
8 may sell any of the securities in which the fund is invested,
9 if necessary, for the proper administration or in the best
10 interests of the fund.

11 Sec. _____. NEW SECTION. 85.67A Administration of fund —
12 permanent prosthetic devices.

13 1. For the purposes of this section:

14 a. "*Prosthetic device*" or "*device*" means a permanent
15 prosthetic device for which an account has been established
16 pursuant to section 85.65, subsection 2.

17 b. "*Prosthetics supplier*" means a person or business who
18 makes or repairs permanent prosthetic devices.

19 c. "*Voucher*" means a written statement that identifies all
20 of the following:

21 (1) The prosthetic device requiring repair or replacement.

22 (2) Whether the device appears to require repair or
23 replacement and the reason the device requires repair or
24 replacement.

25 (3) The exact amount, including taxes, necessary to pay for
26 the repair or replacement of the device.

27 2. The treasurer of state shall pay moneys from an account
28 established pursuant to section 85.65, subsection 2, to
29 a prosthetics supplier for the replacement or repair of a
30 prosthetic device upon the receipt of a voucher.

31 3. a. If an employee dies prior to receiving all moneys
32 credited to the employee pursuant to section 85.65, subsection
33 2, the treasurer of state shall pay the remaining moneys to the
34 employer which originally contributed such moneys.

35 b. If an employer cannot be paid pursuant to paragraph

1 "a", the treasurer of state shall pay remaining moneys to the
2 insurer named in relation to the claim from which the credits
3 arose.

4 c. If an employer or insurer cannot be paid pursuant
5 to paragraphs "a" and "b", the treasurer of state shall pay
6 remaining moneys to the employee's beneficiaries.

7 d. If the employee did not designate any beneficiaries,
8 remaining moneys shall be paid to the employee's estate.

9 4. The labor commissioner and the commissioner of
10 insurance may adopt rules pursuant to chapter 17A to implement
11 this section. Such rules may include guidelines for which
12 prosthetics suppliers may provide a repair or replacement
13 for a prosthetic device, the form a voucher must take, and
14 information in addition to content described in subsection 1,
15 paragraph "c", that must appear on a voucher.>

16 2. By renumbering as necessary.