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SENATE BILL NO. 113
99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

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ADRIANE D. CROUSE, Secretary.

0248S.07P

AN ACT

To repeal sections 287.120, 287.170, 287.243, and 287.780, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation, with an existing penalty provision.

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

Section A. Sections 287.120, 287.170, 287.243, and 287.780, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.120, 287.170, 287.243, and 287.780, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall
2 be liable, irrespective of negligence, to furnish compensation under the provisions
3 of this chapter for personal injury or death of the employee by accident or
4 occupational disease arising out of and in the course of the employee's
5 employment. Any employee of such employer shall not be liable for any injury or
6 death for which compensation is recoverable under this chapter and every
7 employer and employees of such employer shall be released from all other liability
8 whatsoever, whether to the employee or any other person, except that an
9 employee shall not be released from liability for injury or death if the employee
10 engaged in an affirmative negligent act that purposefully and dangerously caused
11 or increased the risk of injury. The term "accident" as used in this section shall

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

12 include, but not be limited to, injury or death of the employee caused by the
13 unprovoked violence or assault against the employee by any person.

14 2. The rights and remedies herein granted to an employee shall exclude
15 all other rights and remedies of the employee, [his wife, her husband] **the**
16 **employee's spouse**, parents, personal representatives, dependents, heirs or next
17 kin, at common law or otherwise, on account of such injury or death by accident
18 or occupational disease, except such rights and remedies as are not provided for
19 by this chapter.

20 3. No compensation shall be allowed under this chapter for the injury or
21 death due to the employee's intentional self-inflicted injury, but the burden of
22 proof of intentional self-inflicted injury shall be on the employer or the person
23 contesting the claim for allowance.

24 4. Where the injury is caused by the failure of the employer to comply
25 with any statute in this state or any lawful order of the division or the
26 commission, the compensation and death benefit provided for under this chapter
27 shall be increased fifteen percent.

28 5. Where the injury is caused by the failure of the employee to use safety
29 devices where provided by the employer, or from the employee's failure to obey
30 any reasonable rule adopted by the employer for the safety of employees, the
31 compensation and death benefit provided for herein shall be reduced at least
32 twenty-five but not more than fifty percent; provided, that it is shown that the
33 employee had actual knowledge of the rule so adopted by the employer; and
34 provided, further, that the employer had, prior to the injury, made a reasonable
35 effort to cause his or her employees to use the safety device or devices and to obey
36 or follow the rule so adopted for the safety of the employees.

37 6. (1) Where the employee fails to obey any rule or policy adopted by the
38 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
39 controlled drugs in the workplace, the compensation and death benefit provided
40 for herein shall be reduced fifty percent if the injury was sustained in conjunction
41 with the use of alcohol or nonprescribed controlled drugs.

42 (2) If, however, the use of alcohol or nonprescribed controlled drugs in
43 violation of the employer's rule or policy is the proximate cause of the injury, then
44 the benefits or compensation otherwise payable under this chapter for death or
45 disability shall be forfeited.

46 (3) The voluntary use of alcohol to the percentage of blood alcohol
47 sufficient under Missouri law to constitute legal intoxication shall give rise to a

48 rebuttable presumption that the voluntary use of alcohol under such
49 circumstances was the proximate cause of the injury. A preponderance of the
50 evidence standard shall apply to rebut such presumption. An employee's refusal
51 to take a test for alcohol or a nonprescribed controlled substance, as defined by
52 section 195.010, at the request of the employer shall result in the forfeiture of
53 benefits under this chapter if the employer had sufficient cause to suspect use of
54 alcohol or a nonprescribed controlled substance by the claimant or if the
55 employer's policy clearly authorizes post-injury testing.

56 **(4) Any positive test result for a nonprescribed controlled drug**
57 **from an employee, if confirmed by mass-spectrometry, using generally**
58 **accepted medical or forensic testing procedures, shall give rise to a**
59 **rebuttable presumption that the tested nonprescribed controlled drug**
60 **was in the employee's system and, if the test was administered within**
61 **twenty-four hours of the injury, such positive result shall give rise to**
62 **a rebuttable presumption that the injury was sustained in conjunction**
63 **with the use of the tested nonprescribed controlled drug. A**
64 **preponderance of the evidence standard shall apply to rebut such**
65 **presumption.**

66 7. Where the employee's participation in a recreational activity or
67 program is the prevailing cause of the injury, benefits or compensation otherwise
68 payable under this chapter for death or disability shall be forfeited regardless
69 that the employer may have promoted, sponsored or supported the recreational
70 activity or program, expressly or impliedly, in whole or in part. The forfeiture of
71 benefits or compensation shall not apply when:

72 (1) The employee was directly ordered by the employer to participate in
73 such recreational activity or program;

74 (2) The employee was paid wages or travel expenses while participating
75 in such recreational activity or program; or

76 (3) The injury from such recreational activity or program occurs on the
77 employer's premises due to an unsafe condition and the employer had actual
78 knowledge of the employee's participation in the recreational activity or program
79 and of the unsafe condition of the premises and failed to either curtail the
80 recreational activity or program or cure the unsafe condition.

81 8. Mental injury resulting from work-related stress does not arise out of
82 and in the course of the employment, unless it is demonstrated that the stress is
83 work related and was extraordinary and unusual. The amount of work stress

84 shall be measured by objective standards and actual events.

85 9. A mental injury is not considered to arise out of and in the course of
86 the employment if it resulted from any disciplinary action, work evaluation, job
87 transfer, layoff, demotion, termination or any similar action taken in good faith
88 by the employer.

89 10. The ability of a firefighter to receive benefits for psychological stress
90 under section 287.067 shall not be diminished by the provisions of subsections 8
91 and 9 of this section.

92 **11. The provisions of subsections 1 and 2 of this section shall**
93 **apply to any case of action pending on or brought on or after**
94 **January 1, 2014, regardless of the date of injury or exposure.**

287.170. 1. For temporary total disability the employer shall pay
2 compensation for not more than four hundred weeks during the continuance of
3 such disability at the weekly rate of compensation in effect under this section on
4 the date of the injury for which compensation is being made. The amount of such
5 compensation shall be computed as follows:

6 (1) For all injuries occurring on or after September 28, 1983, but before
7 September 28, 1986, the weekly compensation shall be an amount equal to
8 sixty-six and two-thirds percent of the injured employee's average weekly
9 earnings as of the date of the injury; provided that the weekly compensation paid
10 under this subdivision shall not exceed an amount equal to seventy percent of the
11 state average weekly wage, as such wage is determined by the division of
12 employment security, as of the July first immediately preceding the date of
13 injury;

14 (2) For all injuries occurring on or after September 28, 1986, but before
15 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six
16 and two-thirds percent of the injured employee's average weekly earnings as of
17 the date of the injury; provided that the weekly compensation paid under this
18 subdivision shall not exceed an amount equal to seventy-five percent of the state
19 average weekly wage, as such wage is determined by the division of employment
20 security, as of the July first immediately preceding the date of injury;

21 (3) For all injuries occurring on or after August 28, 1990, but before
22 August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
23 and two-thirds percent of the injured employee's average weekly earnings as of
24 the date of the injury; provided that the weekly compensation paid under this
25 subdivision shall not exceed an amount equal to one hundred percent of the state

26 average weekly wage;

27 (4) For all injuries occurring on or after August 28, 1991, the weekly
28 compensation shall be an amount equal to sixty-six and two-thirds percent of the
29 injured employee's average weekly earnings as of the date of the injury; provided
30 that the weekly compensation paid under this subdivision shall not exceed an
31 amount equal to one hundred five percent of the state average weekly wage;

32 (5) For all injuries occurring on or after September 28, 1981, the weekly
33 compensation shall in no event be less than forty dollars per week.

34 2. Temporary total disability payments shall be made to the claimant by
35 check or other negotiable instruments approved by the director which will not
36 result in delay in payment and shall be forwarded directly to the claimant
37 without intervention, or, when requested, to claimant's attorney if represented,
38 except as provided in section 454.517, by any other party except by order of the
39 division of workers' compensation.

40 3. An employee is disqualified from receiving temporary total disability
41 during any period of time in which the claimant applies and receives
42 unemployment compensation.

43 4. If the employee is terminated from post-injury employment based upon
44 the employee's post-injury misconduct, neither temporary total disability nor
45 temporary partial disability benefits under this section or section 287.180 are
46 payable. As used in this section, the phrase "post-injury misconduct" shall not
47 include absence from the workplace due to an injury unless the employee is
48 capable of working with restrictions, as certified by a physician.

49 **5. If an employee voluntarily separates from employment with an**
50 **employer at a time when the employer had work available for the**
51 **employee that was in compliance with any medical restriction imposed**
52 **upon the employee within a reasonable degree of medical certainty as**
53 **a result of the injury that is the subject of a claim for benefits under**
54 **this chapter, neither temporary total disability nor temporary partial**
55 **disability benefits available under this section or section 287.180 shall**
56 **be payable.**

287.243. 1. This section shall be known and may be cited as the "Line of
2 Duty Compensation Act".

3 2. As used in this section, unless otherwise provided, the following words
4 shall mean:

5 (1) "Air ambulance pilot", a person certified as an air ambulance pilot in

6 accordance with sections 190.001 to 190.245 and corresponding regulations
7 applicable to air ambulances adopted by the department of health and senior
8 services, division of regulation and licensure, 19 CSR 30-40.005, et seq.;

9 (2) "Air ambulance registered professional nurse", a person licensed as a
10 registered professional nurse in accordance with sections 335.011 to 335.096 and
11 corresponding regulations adopted by the state board of nursing, 20 CSR 2200-4,
12 et seq., who provides registered professional nursing services as a flight nurse in
13 conjunction with an air ambulance program that is certified in accordance with
14 sections 190.001 to 190.245 and the corresponding regulations applicable to such
15 programs;

16 (3) **"Child", any natural, illegitimate, adopted, or posthumous**
17 **child or stepchild of a deceased law enforcement officer, emergency**
18 **medical technician, air ambulance pilot, air ambulance registered**
19 **professional nurse, or firefighter who, at the time of the law**
20 **enforcement officer's, emergency medical technician's, air ambulance**
21 **pilot's, air ambulance registered professional nurse's, or firefighter's**
22 **fatality is:**

23 (a) **Eighteen years of age or under;**

24 (b) **Over eighteen years of age and a student as defined in**
25 **section 8101 of title 5, United States Code; or**

26 (c) **Over eighteen years of age and incapable of self-support**
27 **because of physical or mental disability;**

28 (4) "Emergency medical technician", a person licensed in emergency
29 medical care in accordance with standards prescribed by sections 190.001 to
30 190.245 and by rules adopted by the department of health and senior services
31 under sections 190.001 to 190.245;

32 [(4)] (5) "Firefighter", any person, including a volunteer firefighter,
33 employed by the state or a local governmental entity as an employer defined
34 under subsection 1 of section 287.030, or otherwise serving as a member or officer
35 of a fire department either for the purpose of the prevention or control of fire or
36 the underwater recovery of drowning victims;

37 [(5)] (6) "Killed in the line of duty", when any person defined in this
38 section loses his or her life when:

39 (a) Death is caused by an accident or the willful act of violence of another;

40 (b) The law enforcement officer, emergency medical technician, air
41 ambulance pilot, air ambulance registered professional nurse, or firefighter is in

42 the active performance of his or her duties in his or her respective profession and
43 there is a relationship between the accident or commission of the act of violence
44 and the performance of the duty, even if the individual is off duty; the law
45 enforcement officer, emergency medical technician, air ambulance pilot, air
46 ambulance registered professional nurse, or firefighter is traveling to or from
47 employment; or the law enforcement officer, emergency medical technician, air
48 ambulance pilot, air ambulance registered professional nurse, or firefighter is
49 taking any meal break or other break which takes place while that individual is
50 on duty;

51 (c) Death is the natural and probable consequence of the injury; and

52 (d) Death occurs within three hundred weeks from the date the injury was
53 received.

54 The term excludes death resulting from the willful misconduct or intoxication of
55 the law enforcement officer, emergency medical technician, air ambulance pilot,
56 air ambulance registered professional nurse, or firefighter. The division of
57 workers' compensation shall have the burden of proving such willful misconduct
58 or intoxication;

59 [(6)] (7) "Law enforcement officer", any person employed by the state or
60 a local governmental entity as a police officer, peace officer certified under
61 chapter 590, or serving as an auxiliary police officer or in some like position
62 involving the enforcement of the law and protection of the public interest at the
63 risk of that person's life;

64 [(7)] (8) "Local governmental entity", includes counties, municipalities,
65 townships, board or other political subdivision, cities under special charter, or
66 under the commission form of government, fire protection districts, ambulance
67 districts, and municipal corporations;

68 [(8)] (9) "State", the state of Missouri and its departments, divisions,
69 boards, bureaus, commissions, authorities, and colleges and universities;

70 [(9)] (10) "Volunteer firefighter", a person having principal employment
71 other than as a firefighter, but who is carried on the rolls of a regularly
72 constituted fire department either for the purpose of the prevention or control of
73 fire or the underwater recovery of drowning victims, the members of which are
74 under the jurisdiction of the corporate authorities of a city, village, incorporated
75 town, or fire protection district. Volunteer firefighter shall not mean an
76 individual who volunteers assistance without being regularly enrolled as a
77 firefighter.

78 3. (1) A claim for compensation under this section shall be filed [by the
79 estate of] **by survivors of** the deceased with the division of workers'
80 compensation not later than one year from the date of death of a law enforcement
81 officer, emergency medical technician, air ambulance pilot, air ambulance
82 registered professional nurse, or firefighter. If a claim is made within one year
83 of the date of death of a law enforcement officer, emergency medical technician,
84 air ambulance pilot, air ambulance registered professional nurse, or firefighter
85 killed in the line of duty, compensation shall be paid, if the division finds that the
86 claimant is entitled to compensation under this section.

87 (2) The amount of compensation paid to the claimant shall be twenty-five
88 thousand dollars, subject to appropriation, for death occurring on or after June
89 19, 2009.

90 4. **Any compensation awarded under the provisions of this**
91 **section shall be distributed as follows:**

92 (1) **If there is no child who survived the law enforcement officer,**
93 **emergency medical technician, air ambulance pilot, air ambulance**
94 **registered professional nurse, or firefighter, to the surviving spouse of**
95 **the law enforcement officer, emergency medical technician, air**
96 **ambulance pilot, air ambulance registered professional nurse, or**
97 **firefighter;**

98 (2) **If there is at least one child who survived the law**
99 **enforcement officer, emergency medical technician, air ambulance**
100 **pilot, air ambulance registered professional nurse, or firefighter, and**
101 **a surviving spouse of the law enforcement officer, emergency medical**
102 **technician, air ambulance pilot, air ambulance registered professional**
103 **nurse, or firefighter, fifty percent to the surviving child, or children, in**
104 **equal shares, and fifty percent to the surviving spouse;**

105 (3) **If there is no surviving spouse of the law enforcement officer,**
106 **emergency medical technician, air ambulance pilot, air ambulance**
107 **registered professional nurse, or firefighter, to the surviving child, or**
108 **children, in equal shares;**

109 (4) **If there is no surviving spouse of the law enforcement officer,**
110 **emergency medical technician, air ambulance pilot, air ambulance**
111 **registered professional nurse, or firefighter and no surviving child:**

112 (a) **To the surviving individual, or individuals, in shares per the**
113 **designation or, otherwise, in equal shares, designated by the law**

114 **enforcement officer, emergency medical technician, air ambulance**
115 **pilot, air ambulance registered professional nurse, or firefighter to**
116 **receive benefits under this subsection in the most recently executed**
117 **designation of beneficiary of the law enforcement officer, emergency**
118 **medical technician, air ambulance pilot, air ambulance registered**
119 **professional nurse, or firefighter on file at the time of death with the**
120 **public safety agency, organization, or unit; or**

121 **(b) If there is no individual qualifying under paragraph (a), to**
122 **the surviving individual, or individuals, in equal shares, designated by**
123 **the law enforcement officer, emergency medical technician, air**
124 **ambulance pilot, air ambulance registered professional nurse, or**
125 **firefighter to receive benefits under the most recently executed life**
126 **insurance policy of the law enforcement officer, emergency medical**
127 **technician, air ambulance pilot, air ambulance registered professional**
128 **nurse, or firefighter on file at the time of death with the public safety**
129 **agency, organization, or unit;**

130 **(5) If there is no individual qualifying under subdivisions (1), (2),**
131 **(3), or (4) of this subsection, to the surviving parent, or parents, in**
132 **equal shares, of the law enforcement officer, emergency medical**
133 **technician, air ambulance pilot, air ambulance registered professional**
134 **nurse, or firefighter; or**

135 **(6) If there is no individual qualifying under subdivisions (1), (2),**
136 **(3), (4), or (5) of this subsection, to the surviving individual, or**
137 **individuals, in equal shares, who would otherwise qualify under the**
138 **definition of the term "child" but for his or her age.**

139 **5. Notwithstanding subsection 3 of this section, no compensation is**
140 **payable under this section unless a claim is filed within the time specified under**
141 **this section setting forth:**

142 **(1) The name, address, and title or designation of the position in which**
143 **the law enforcement officer, emergency medical technician, air ambulance pilot,**
144 **air ambulance registered professional nurse, or firefighter was serving at the time**
145 **of his or her death;**

146 **(2) The name and address of the claimant;**

147 **(3) A full, factual account of the circumstances resulting in or the course**
148 **of events causing the death at issue; and**

149 **(4) Such other information that is reasonably required by the division.**

150 **When a claim is filed, the division of workers' compensation shall make an**

151 investigation for substantiation of matters set forth in the application.

152 [5.] 6. The compensation provided for under this section is in addition to,
153 and not exclusive of, any pension rights, death benefits, or other compensation
154 the claimant may otherwise be entitled to by law.

155 [6.] 7. Neither employers nor workers' compensation insurers shall have
156 subrogation rights against any compensation awarded for claims under this
157 section. Such compensation shall not be assignable, shall be exempt from
158 attachment, garnishment, and execution, and shall not be subject to setoff or
159 counterclaim, or be in any way liable for any debt, except that the division or
160 commission may allow as lien on the compensation, reasonable attorney's fees for
161 services in connection with the proceedings for compensation if the services are
162 found to be necessary. Such fees are subject to regulation as set forth in section
163 287.260.

164 [7.] 8. Any person seeking compensation under this section who is
165 aggrieved by the decision of the division of workers' compensation regarding his
166 or her compensation claim, may make application for a hearing as provided in
167 section 287.450. The procedures applicable to the processing of such hearings
168 and determinations shall be those established by this chapter. Decisions of the
169 administrative law judge under this section shall be binding, subject to review by
170 either party under the provisions of section 287.480.

171 [8.] 9. Pursuant to section 23.253 of the Missouri sunset act:

172 (1) The provisions of the new program authorized under this section shall
173 automatically sunset six years after June 19, 2019, unless reauthorized by an act
174 of the general assembly; and

175 (2) If such program is reauthorized, the program authorized under this
176 section shall automatically sunset twelve years after the effective date of the
177 reauthorization of this section; and

178 (3) This section shall terminate on September first of the calendar year
179 immediately following the calendar year in which the program authorized under
180 this section is sunset.

181 [9.] 10. The provisions of this section, unless specified, shall not be
182 subject to other provisions of this chapter.

183 [10.] 11. There is hereby created in the state treasury the "Line of Duty
184 Compensation Fund", which shall consist of moneys appropriated to the fund and
185 any voluntary contributions, gifts, or bequests to the fund. The state treasurer
186 shall be custodian of the fund and shall approve disbursements from the fund in

187 accordance with sections 30.170 and 30.180. Upon appropriation, money in the
188 fund shall be used solely for paying claims under this section. Notwithstanding
189 the provisions of section 33.080 to the contrary, any moneys remaining in the
190 fund at the end of the biennium shall not revert to the credit of the general
191 revenue fund. The state treasurer shall invest moneys in the fund in the same
192 manner as other funds are invested. Any interest and moneys earned on such
193 investments shall be credited to the fund.

194 [11.] 12. The division shall promulgate rules to administer this section,
195 including but not limited to the appointment of claims to multiple claimants,
196 record retention, and procedures for information requests. Any rule or portion
197 of a rule, as that term is defined in section 536.010, that is created under the
198 authority delegated in this section shall become effective only if it complies with
199 and is subject to all of the provisions of chapter 536 and, if applicable, section
200 536.028. This section and chapter 536 are nonseverable and if any of the powers
201 vested with the general assembly under chapter 536 to review, to delay the
202 effective date, or to disapprove and annul a rule are subsequently held
203 unconstitutional, then the grant of rulemaking authority and any rule proposed
204 or adopted after June 19, 2009, shall be invalid and void.

287.780. No employer or agent shall discharge or [in any way]
2 discriminate against any employee for exercising any of his **or her** rights under
3 this chapter **when the exercising of such rights is the motivating factor**
4 **in the discharge or discrimination.** Any employee who has been discharged
5 or discriminated against **in such manner** shall have a civil action for damages
6 against his **or her** employer. **For purposes of this section, "motivating**
7 **factor" shall mean that the employee's exercise of his or her rights**
8 **under this chapter actually played a role in the discharge or**
9 **discrimination and had a determinative influence on the discharge or**
10 **discrimination.**

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