AN ACT

To repeal sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, and 287.780, RSMo, and to enact in lieu thereof twelve new sections relating to workers' compensation.

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

Section A. Sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, and 287.780, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.240, 287.243, 287.280, 287.390, and 287.780, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subdivision (42) of section 301.010, and operator of a motor vehicle

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
which is leased or contracted with a driver to a for-hire motor carrier operating
within a commercial zone as defined in section 390.020 or 390.041, or operating
under a certificate issued by the Missouri department of transportation or by the
United States Department of Transportation, or any of its subagencies. The word
"employee" also shall not include any person performing services for board,
lodging, aid, or sustenance received from any religious, charitable, or relief
organization.

2. The word "accident" as used in this chapter shall mean an unexpected
traumatic event or unusual strain identifiable by time and place of occurrence
and producing at the time objective symptoms of an injury caused by a specific
event during a single work shift. An injury is not compensable because work was
a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury
which has arisen out of and in the course of employment. An injury by accident
is compensable only if the accident was the prevailing factor in causing both the
resulting medical condition and disability. "The prevailing factor" is defined to
be the primary factor, in relation to any other factor, causing both the resulting
medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the
employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances,
that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment
to which workers would have been equally exposed outside of and unrelated to the
employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not
compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or
cerebrovascular accident or myocardial infarction suffered by a worker is an
injury only if the accident is the prevailing factor in causing the resulting medical
condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the
physical structure of the body and to the personal property which is used to make
up the physical structure of the body, such as artificial dentures, artificial limbs,
glass eyes, eyeglasses, and other prostheses which are placed in or on the body
to replace the physical structure and such disease or infection as naturally results
therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

6. The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

7. As used in this chapter and all acts amendatory thereof, the term "commission" shall hereafter be construed as meaning and referring exclusively to the labor and industrial relations commission of Missouri, and the term "director" shall hereafter be construed as meaning the director of the department of insurance, financial institutions and professional registration of the state of Missouri or such agency of government as shall exercise the powers and duties now conferred and imposed upon the department of insurance, financial institutions and professional registration of the state of Missouri.

8. The term "division" as used in this chapter means the division of workers' compensation of the department of labor and industrial relations of the state of Missouri.

9. For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section 287.250 shall control.

10. In applying the provisions of this chapter, it is the intent of the
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legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

11. For the purposes of this chapter, "occupational diseases due to toxic exposure" shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis, brochiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia, and myelodysplastic syndrome.

12. For the purposes of this chapter, "maximum medical improvement" shall mean the point at which the injured employee's medical condition has stabilized and can no longer reasonably improve with additional medical care, as determined within a reasonable degree of medical certainty.

287.037. 1. Notwithstanding any other provision of law to the contrary, beginning January 1, 1997, those insurance companies providing coverage pursuant to chapter 287, to a limited liability company, as defined in section 347.015, shall provide coverage for the employees of the limited liability company who are not members of the limited liability company. Members of the limited liability company, as defined in section 347.015, shall also be provided coverage pursuant to chapter 287, but such members may individually elect to reject such coverage by providing a written notice of such rejection on a form developed by the department of insurance, financial institutions and professional registration to the limited liability company and its insurer. Failure to provide notice to the limited liability company shall not be grounds for any member to claim that the rejection of such coverage is not legally effective. A member who elects to reject such coverage shall not thereafter be entitled to workers' compensation benefits under the policy, even if serving or working in the capacity of an employee of the limited liability company, at least until such time as said member provides the limited liability company and its insurer with a written notice which rescinds the prior rejection of such coverage. The written notice which rescinds the prior rejection of such coverage shall be on a form developed by the department of insurance, financial institutions and professional registration. Any rescission shall be prospective in nature and shall entitle the member only to such benefits...
which accrue on or after the date the notice of rescission form is received by the insurance company.

2. Notwithstanding any other provision of law to the contrary, beginning January 1, 2018, a shareholder of an S corporation, as defined in subsection 1 of section 143.471, with at least forty percent or greater interest in the S corporation, may individually elect to reject coverage under this chapter by providing a written notice of such rejection to the S corporation and its insurer. Failure to provide notice to the S corporation shall not be grounds for any shareholder to claim that the rejection of such coverage is not legally effective. A shareholder who elects to reject such coverage shall not thereafter be entitled to workers' compensation benefits under the policy, even if serving or working in the capacity of an employee of the S corporation, at least until such time as such shareholder provides the S corporation and its insurer with a written notice that rescinds the prior rejection of such coverage. Any rescission shall be prospective in nature and shall entitle the shareholder only to such benefits that accrue on or after the date the notice of rescission is received by the insurance company.

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

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

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

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

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

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

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

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption. An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of
alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

(4) Any positive test result for a nonprescribed controlled drug or the metabolites of such drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's system at the time of the accident or injury and that the injury was sustained in conjunction with the use of the tested nonprescribed controlled drug if:

(a) The initial testing was administered within twenty-four hours of the accident or injury;

(b) Notice was given to the employee of the test results within fourteen calendar days of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

(c) The employee was given an opportunity to perform a second test upon the original sample; and

(d) The initial or any subsequent testing that forms the basis of the presumption was confirmed by mass spectrometry using generally accepted medical or forensic testing procedures.

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

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

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

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

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is
work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

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

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

287.149. 1. Temporary total disability or temporary partial disability benefits shall be paid throughout the rehabilitative process until the employee reaches maximum medical improvement, unless such benefits are terminated by the employee's return to work or are terminated as otherwise specified in this chapter.

2. The permanency of the employee's disability under sections 287.170 to 287.200 shall not be established, determined or adjudicated while the employee is participating in rehabilitation services.

3. Refusal of the employee to accept rehabilitation services or submit to a vocational rehabilitation assessment as deemed necessary by the employer shall result in a fifty percent reduction in all disability payments to an employee, including temporary partial disability benefits paid pursuant to section 287.180, for each week of the period of refusal.

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

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

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

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

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

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

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

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

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

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

287.200. 1. Compensation for permanent total disability shall be paid
during the continuance of such disability from the date of maximum medical
improvement for the lifetime of the employee at the weekly rate of
compensation in effect under this subsection on the date of the injury for which
compensation is being made. The word "employee" as used in this section shall
not include the injured worker's dependents, estate, or other persons to whom
compensation may be payable as provided in subsection 1 of section 287.020. The
amount of such compensation shall be computed as follows:

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

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

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

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

2. Permanent total disability benefits that have accrued through the date of the injured employee's death are the only permanent total disability benefits that are to be paid in accordance with section 287.230. The right to unaccrued compensation for permanent total disability of an injured employee terminates on the date of the injured employee's death in accordance with section 287.230, and does not survive to the injured employee's dependents, estate, or other persons to whom compensation might otherwise be payable.

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

4. For all claims filed on or after January 1, 2014, for occupational diseases due to toxic exposure which result in a permanent total disability or death, benefits in this chapter shall be provided as follows:

(1) Notwithstanding any provision of law to the contrary, such amount as due to the employee during said employee's life as provided for under this chapter for an award of permanent total disability and death, except such amount shall only be paid when benefits under subdivisions (2) and (3) of this subsection have been exhausted;

(2) For occupational diseases due to toxic exposure, but not including
mesothelioma, an amount equal to two hundred percent of the state's average weekly wage as of the date of diagnosis for one hundred weeks paid by the employer; and

(3) In cases where occupational diseases due to toxic exposure are diagnosed to be mesothelioma:

(a) For employers that have elected to accept mesothelioma liability under this subsection, an additional amount of three hundred percent of the state's average weekly wage for two hundred twelve weeks shall be paid by the employer or group of employers such employer is a member of. Employers that elect to accept mesothelioma liability under this subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by becoming a member of a group insurance pool. A group of employers may enter into an agreement to pool their liabilities under this subsection. If such group is joined, individual members shall not be required to qualify as individual self-insurers. Such group shall comply with section 287.223. In order for an employer to make such an election, the employer shall provide the department with notice of such an election in a manner established by the department. The provisions of this paragraph shall expire on December 31, 2038; or

(b) For employers who reject mesothelioma under this subsection, then the exclusive remedy provisions under section 287.120 shall not apply to such liability. The provisions of this paragraph shall expire on December 31, 2038; and

(4) The provisions of subdivision (2) and paragraph (a) of subdivision (3) of this subsection shall not be subject to suspension of benefits as provided in subsection 3 of this section; and

(5) Notwithstanding any other provision of this chapter to the contrary, should the employee die before the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection are paid, the additional benefits are payable to the employee's spouse or children, natural or adopted, legitimate or illegitimate, in addition to benefits provided under section 287.240. If there is no surviving spouse or children and the employee has received less than the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision (3) of this subsection the remainder of such additional benefits shall be paid as a single payment to the estate of the employee;

(6) The provisions of subdivision (1) of this subsection shall not be construed to affect the employee's ability to obtain medical treatment at the
employer's expense or any other benefits otherwise available under this chapter.

5. Any employee who obtains benefits under subdivision (2) of subsection 4 of this section for acquiring asbestosis who later obtains an award for mesothelioma shall not receive more benefits than such employee would receive having only obtained benefits for mesothelioma under this section.

287.203. Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within [sixty] thirty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

287.240. If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section:

1. In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding five thousand dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he or she has furnished the same by authority of the widow or widower, the nearest relative of the deceased employee in the county of his or her death, his or her personal representative, or the employer, who shall have the right to give the authority in the order named. All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the division or the commission and shall be limited to such as are fair and reasonable for similar service to persons of a like standard of living. The division or the commission shall also have jurisdiction to hear and determine all disputes as to the charges. If the deceased employee leaves no dependents, the death benefit in this subdivision provided shall be the limit of the liability of the employer under this chapter on account of the death, except as herein provided for burial expenses and except as provided in section 287.140; provided that in all cases when the employer admits or does not deny liability for
the burial expense, it shall be paid within thirty days after written notice, that
the service has been rendered, has been delivered to the employer. The notice
may be sent by registered mail, return receipt requested, or may be made by
personal delivery;

(2) The employer shall also pay to the [total] dependents of the employee
a death benefit based on the employee's average weekly earnings during the year
immediately preceding the injury that results in the death of the employee, as
provided in section 287.250. The amount of compensation for death, which shall
be paid in installments in the same manner that compensation is required to be
paid under this chapter, shall be computed as follows:

(a) If the injury which caused the death occurred on or after September
28, 1983, but before September 28, 1986, the weekly compensation shall be an
amount equal to sixty-six and two-thirds percent of the employee's average
weekly earnings during the year immediately preceding the injury; provided that
the weekly compensation paid under this paragraph shall not exceed an amount
equal to seventy percent of the state average weekly wage, as such wage is
determined by the division of employment security, as of the July first
immediately preceding the date of injury. If there is a total dependent, no death
benefits shall be payable to partial dependents or any other persons except as
provided in subdivision (1) of this section;

(b) If the injury which caused the death occurred on or after September
28, 1986, but before August 28, 1990, the weekly compensation shall be an
amount equal to sixty-six and two-thirds percent of the employee's average
weekly earnings during the year immediately preceding the injury; provided that
the weekly compensation paid under this paragraph shall not exceed an amount
equal to seventy-five percent of the state average weekly wage, as such wage is
determined by the division of employment security, as of the July first
immediately preceding the date of injury. If there is a total dependent, no death
benefit shall be payable to partial dependents or any other persons except as
provided in subdivision (1) of this section;

(c) If the injury which caused the death occurred on or after August 28,
1990, but before August 28, 1991, the weekly compensation shall be an amount
equal to sixty-six and two-thirds percent of the injured employee's average weekly
earnings as of the date of the injury; provided that the weekly compensation paid
under this paragraph shall not exceed an amount equal to one hundred percent
of the state average weekly wage;
(d) If the injury which caused the death occurred on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this paragraph shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

(e) If the injury which caused the death occurred on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week;

(3) If there are partial dependents, and no total dependents, a part of the death benefit herein provided in the case of total dependents, determined by the proportion of his contributions to all partial dependents by the employee at the time of the injury, shall be paid by the employer to each of the dependents proportionately;

(4) The word "dependent" as used in this chapter shall mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee, and any death benefit shall be payable to them to the exclusion of other total dependents:

(a) A wife upon a husband with whom she lives or who is legally liable for her support, and a husband upon a wife with whom he lives or who is legally liable for his support; provided that on the death or remarriage of a widow or widower, the death benefit shall cease unless there be other [total] dependents entitled to any death benefits under this chapter. In the event of remarriage, a lump sum payment equal in amount to the benefits due for a period of two years shall be paid to the widow or widower. Thereupon the periodic death benefits shall cease unless there are other [total] dependents entitled to any death benefit under this chapter, in which event the periodic benefits to which such widow or widower would have been entitled had he or she not died or remarried shall be divided among such other [total] dependents and paid to them during their period of entitlement under this chapter; or

(b) A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, including any stepchild claimable by the deceased on his or her federal tax return at the time of injury, under the age of eighteen years, or over that age if physically or mentally incapacitated
from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent. In case there is a wife or a husband mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and a child or more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on the dependency. In all other cases questions of total or partial the degree of dependency shall be determined in accordance with the facts at the time of the injury, and in such other cases if there is more than one person wholly dependent the death benefit shall be divided equally among them. The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his or her active duty in the Armed Forces, unless there are other total dependents entitled to the death benefit under this chapter;

[(5) (4)] The division or the commission may, in its discretion, order or award the share of compensation of any such child to be paid to the parent, grandparent, or other adult next of kin or conservator of the child for the latter's support, maintenance and education, which order or award upon notice to the parties may be modified from time to time by the commission in its discretion with respect to the person to whom shall be paid the amount of the order or award remaining unpaid at the time of the modification;

[(6) (5)] The payments of compensation by the employer in accordance with the order or award of the division or the commission shall discharge the employer from all further obligations as to the compensation;

[(7) (6)] All death benefits in this chapter shall be paid in installments in the same manner as provided for disability compensation;

[(8) (7)] Every employer shall keep a record of the correct names and addresses of the dependents of each of his or her employees, and upon the death
of an employee by accident arising out of and in the course of his or her employment shall so far as possible immediately furnish the division with such names and addresses;

[(9)] (8) Dependents receiving death benefits under the provisions of this chapter shall annually report to the division as to marital status in the case of a widow or widower or age and physical or mental condition of a dependent child. The division shall provide forms for the making of such reports.

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

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

(1) "Air ambulance pilot", a person certified as an air ambulance pilot in accordance with sections 190.001 to 190.245 and corresponding regulations applicable to air ambulances adopted by the department of health and senior services, division of regulation and licensure, 19 CSR 30-40.005, et seq.;

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

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

(a) Eighteen years of age or under;

(b) Over eighteen years of age and a student, as defined in 5 U.S.C. Section 8101; or

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

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

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

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

(a) Death is caused by an accident or the willful act of violence of another;
(b) The law enforcement officer, emergency medical technician, air
ambulance pilot, air ambulance registered professional nurse, or firefighter is in
the active performance of his or her duties in his or her respective profession and
there is a relationship between the accident or commission of the act of violence
and the performance of the duty, even if the individual is off duty; the law
enforcement officer, emergency medical technician, air ambulance pilot, air
ambulance registered professional nurse, or firefighter is traveling to or from
employment; or the law enforcement officer, emergency medical technician, air
ambulance pilot, air ambulance registered professional nurse, or firefighter is
taking any meal break or other break which takes place while that individual is
on duty;
(c) Death is the natural and probable consequence of the injury; and
(d) Death occurs within three hundred weeks from the date the injury was
received.

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

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

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

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

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

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

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

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

(1) To the surviving spouse of the law enforcement officer,
emergency medical technician, air ambulance pilot, air ambulance
registered professional nurse, or firefighter if there is no child who
survived the law enforcement officer, emergency medical technician,
air ambulance pilot, air ambulance registered professional nurse, or
firefighter;

(2) Fifty percent to the surviving child, or children, in equal
shares, and fifty percent to the surviving spouse if there is at least one
child who survived the law enforcement officer, emergency medical
technician, air ambulance pilot, air ambulance registered professional
nurse, or firefighter, and a surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;

(3) To the surviving child, or children, in equal shares, if there is no surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;

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

(a) To the surviving individual, or individuals, in shares per the designation or, otherwise, in equal shares, designated by the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter to receive benefits under this subsection in the most recently executed designation of beneficiary of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter on file at the time of death with the public safety agency, organization, or unit; or

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

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

(6) To the surviving individual, or individuals, in equal shares, who would qualify under the definition of the term "child" but for age if there is no individual qualifying under subdivision (1), (2), (3), (4), or (5) of this subsection.
5. Notwithstanding subsection 3 of this section, no compensation is payable under this section unless a claim is filed within the time specified under this section setting forth:

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

(2) The name and address of the claimant;

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

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

When a claim is filed, the division of workers' compensation shall make an investigation for substantiation of matters set forth in the application.

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

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

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

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

(1) The provisions of the new program authorized under this section shall automatically sunset six years after June 19, 2019, unless reauthorized by an act of the general assembly; and
(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

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

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

[10.] 11. There is hereby created in the state treasury the "Line of Duty Compensation Fund", which shall consist of moneys appropriated to the fund and any voluntary contributions, gifts, or bequests to the fund. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with sections 30.170 and 30.180. Upon appropriation, money in the fund shall be used solely for paying claims under this section. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

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

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure their entire liability under the workers' compensation law; and may insure in whole or in part their employer liability, under a policy of insurance or a self-insurance plan, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the
whole or any part of the liability without insurance upon satisfying the division of their ability to do so. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his or her dependents may elect after the injury either to bring an action against such employer or group of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of the employee; or to recover under this chapter with the compensation payments commuted and immediately payable; or, if the employee elects to do so, he or she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 7 of section 287.220. If the employer or group of employers are carrying their own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the employer or group of employers to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but the employer or group of employers may carry their own risk for any excess liability. When a group of employers enter into an agreement to pool their liabilities under this chapter, individual members will not be required to qualify as individual self-insurers.

2. Groups of employers qualified to insure their liability pursuant to chapter 537 or this chapter shall utilize a uniform experience rating plan promulgated by an approved advisory organization. Such groups shall develop experience ratings for their members based on the plan. Nothing in this section shall relieve an employer from remitting, without any charge to the employer, the employer's claims history to an approved advisory organization.

3. For every entity qualified to group self-insure their liability pursuant
to this chapter or chapter 537, each entity shall not authorize total discounts for any individual member exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on objective quantitative factors and applied uniformly to all trust members.

4. Any group of employers that have qualified to self-insure their liability pursuant to this chapter shall file with the division premium rates, based on pure premium rate data, adjusted for loss development and loss trending as filed by the advisory organization with the department of insurance, financial institutions and professional registration pursuant to section 287.975, plus any estimated expenses and other factors or based on average rate classifications calculated by the department of insurance, financial institutions and professional registration as taken from the premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. The rate is inadequate if funds equal to the full ultimate cost of anticipated losses and loss adjustment expenses are not produced when the prospective loss costs are applied to anticipated payrolls. The provisions of this subsection shall not apply to those political subdivisions of this state that have qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620 on an assessment plan. Any such group may file with the division a composite rate for all coverages provided under that section.

5. When considering applications for new trust self-insurers, as described under 8 CSR 50-3.010, the division shall require proof of payment by each member of not less than twenty-five percent of the estimated annual premium; except that, for new members who wish to join an existing trust self-insurer during the policy year rather than at the beginning of the policy year, the division shall require proof of payment of the lesser of the estimated premium of three months or the estimated premium for the balance of the policy year.

6. Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus moneys from a prior trust year not needed for current obligations. Notwithstanding any provision of law to the contrary, upon approval by the division, a self-insured trust may invest up to one hundred percent of surplus moneys in securities designated by the state treasurer as acceptable collateral to secure state deposits under section 30.270.

7. Any finding or determination made by the division under this section
may be reviewed as provided in sections 287.470 and 287.480.

[6.] 8. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

[7.] 9. Any records submitted pursuant to this section, and pursuant to any rule promulgated by the division pursuant to this section, shall be considered confidential and not subject to chapter 610. Any party to a workers' compensation case involving the party that submitted the records shall be able to subpoena the records for use in a workers' compensation case, if the information is otherwise relevant.

287.390. 1. Parties to claims hereunder may enter into voluntary agreements in settlement thereof, but no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. An administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement.

2. A compromise settlement approved by an administrative law judge or the commission during the employee's lifetime shall extinguish and bar all claims for compensation for the employee's death if the settlement compromises a dispute on any question or issue other than the extent of disability or the rate of compensation.

3. Notwithstanding the provisions of section 287.190, an employee shall be afforded the option of receiving a compromise settlement as a one-time lump sum payment. A compromise settlement approved by an administrative law judge or the commission shall indicate the manner of payment chosen by the employee.

4. A minor dependent, by parent or conservator, may compromise disputes and may enter into a compromise settlement agreement, and upon approval by an administrative law judge or the commission the settlement agreement shall have the same force and effect as though the minor had been an adult. The
payment of compensation by the employer in accordance with the settlement agreement shall discharge the employer from all further obligation.

5. In any claim under this chapter where an offer of settlement is made in writing and filed with the division by the employer, an employee is entitled to one hundred percent of the amount offered, provided such employee is not represented by counsel at the time the offer is tendered. Where such offer of settlement is not accepted and where additional proceedings occur with regard to the employee's claim, the employee is entitled to one hundred percent of the amount initially offered. Legal counsel representing the employee shall receive reasonable fees for services rendered.

6. As used in this chapter, "amount in dispute" means the dollar amount in excess of the dollar amount offered or paid by the employer. An offer of settlement shall not be construed as an admission of liability.

7. (1) In the case of compromise settlements offered after a claimant has reached maximum medical improvement, upon receipt of a permanent disability rating from the employer's physician, a claimant shall have a period of twelve months from such date to acquire a rating from a second physician of his or her own choosing.

(2) Absent a finding of extenuating circumstances by an administrative law judge or the commission, if after twelve months a claimant has not acquired a rating from a second physician, any compromise settlement entered into under this section shall be based upon the initial rating.

(3) A finding of extenuating circumstances by an administrative law judge or the commission shall require more than failure of the claimant to timely obtain a rating from a second physician.

(4) The provisions of this subsection may be waived by the employer with or without stating a cause.

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

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