

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 113**  
**99TH GENERAL ASSEMBLY**

0248H.09C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 287.037, 287.120, 287.170, 287.243, and 287.780, RSMo, and to enact in lieu thereof five new sections relating to workers' compensation.

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

Section A. Sections 287.037, 287.120, 287.170, 287.243, and 287.780, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 287.037, 287.120,  
3 287.170, 287.243, and 287.780, to read as follows:

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 be on a form developed by the department of insurance, financial institutions and professional  
17 registration. Any rescission shall be prospective in nature and shall entitle the member only to  
18 such benefits which accrue on or after the date the notice of rescission form is received by the  
19 insurance company.

20 **2. Notwithstanding any other provision of law to the contrary, beginning January**  
21 **1, 2018, a shareholder of an S corporation, as defined in subsection 1 of section 143.471,**  
22 **with at least forty percent or greater interest in the S corporation, may individually elect**  
23 **to reject coverage under this chapter by providing a written notice of such rejection to the**  
24 **S corporation and its insurer. Failure to provide notice to the S corporation shall not be**  
25 **grounds for any shareholder to claim that the rejection of such coverage is not legally**  
26 **effective. A shareholder who elects to reject such coverage shall not thereafter be entitled**  
27 **to workers' compensation benefits under the policy, even if serving or working in the**  
28 **capacity of an employee of the S corporation, at least until such time as such shareholder**  
29 **provides the S corporation and its insurer with a written notice that rescinds the prior**  
30 **rejection of such coverage. Any rescission shall be prospective in nature and shall entitle**  
31 **the shareholder only to such benefits that accrue on or after the date the notice of**  
32 **rescission is received by the insurance company.**

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

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

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

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

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

31           6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
32 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the  
33 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent  
34 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled  
35 drugs.

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

39           (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under  
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the  
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A  
42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's  
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section  
44 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter  
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled  
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

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

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

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

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

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

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

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

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

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

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

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

82           10. The ability of a firefighter to receive benefits for psychological stress under section  
83 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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

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

11 (2) For all injuries occurring on or after September 28, 1986, but before August 28,  
12 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of  
13 the injured employee's average weekly earnings as of the date of the injury; provided that the  
14 weekly compensation paid under this subdivision shall not exceed an amount equal to  
15 seventy-five percent of the state average weekly wage, as such wage is determined by the  
16 division of employment security, as of the July first immediately preceding the date of injury;

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

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

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

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

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

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

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

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

37 commission of the act of violence and the performance of the duty, even if the individual is off  
38 duty; the law enforcement officer, emergency medical technician, air ambulance pilot, air  
39 ambulance registered professional nurse, or firefighter is traveling to or from employment; or the  
40 law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance  
41 registered professional nurse, or firefighter is taking any meal break or other break which takes  
42 place while that individual is on duty;

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

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

45

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

50 ~~[(6)]~~ (7) "Law enforcement officer", any person employed by the state or a local  
51 governmental entity as a police officer, peace officer certified under chapter 590, or serving as  
52 an auxiliary police officer or in some like position involving the enforcement of the law and  
53 protection of the public interest at the risk of that person's life;

54 ~~[(7)]~~ (8) "Local governmental entity", includes counties, municipalities, townships,  
55 board or other political subdivision, cities under special charter, or under the commission form  
56 of government, fire protection districts, ambulance districts, and municipal corporations;

57 ~~[(8)]~~ (9) "State", the state of Missouri and its departments, divisions, boards, bureaus,  
58 commissions, authorities, and colleges and universities;

59 ~~[(9)]~~ (10) "Volunteer firefighter", a person having principal employment other than as  
60 a firefighter, but who is carried on the rolls of a regularly constituted fire department either for  
61 the purpose of the prevention or control of fire or the underwater recovery of drowning victims,  
62 the members of which are under the jurisdiction of the corporate authorities of a city, village,  
63 incorporated town, or fire protection district. Volunteer firefighter shall not mean an individual  
64 who volunteers assistance without being regularly enrolled as a firefighter.

65 3. (1) A claim for compensation under this section shall be filed by ~~[the estate of]~~  
66 **survivors of** the deceased with the division of workers' compensation not later than one year  
67 from the date of death of a law enforcement officer, emergency medical technician, air  
68 ambulance pilot, air ambulance registered professional nurse, or firefighter. If a claim is made  
69 within one year of the date of death of a law enforcement officer, emergency medical technician,  
70 air ambulance pilot, air ambulance registered professional nurse, or firefighter killed in the line  
71 of duty, compensation shall be paid, if the division finds that the claimant is entitled to  
72 compensation under this section.

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

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

77 (1) **If there is no child who survived the law enforcement officer, emergency**  
78 **medical technician, air ambulance pilot, air ambulance registered professional nurse, or**  
79 **firefighter, to the surviving spouse of the law enforcement officer, emergency medical**  
80 **technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;**

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

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

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

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

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

107 (5) **If there is no individual qualifying under subdivision (1), (2), (3), or (4) of this**  
108 **subsection, to the surviving parent, or parents, in equal shares, of the law enforcement**

109 **officer, emergency medical technician, air ambulance pilot, air ambulance registered**  
110 **professional nurse, or firefighter; or**

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

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

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

119 (2) The name and address of the claimant;

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

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

123

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

126 ~~[5-]~~ **6.** The compensation provided for under this section is in addition to, and not  
127 exclusive of, any pension rights, death benefits, or other compensation the claimant may  
128 otherwise be entitled to by law.

129 ~~[6-]~~ **7.** Neither employers nor workers' compensation insurers shall have subrogation  
130 rights against any compensation awarded for claims under this section. Such compensation shall  
131 not be assignable, shall be exempt from attachment, garnishment, and execution, and shall not  
132 be subject to setoff or counterclaim, or be in any way liable for any debt, except that the division  
133 or commission may allow as lien on the compensation, reasonable attorney's fees for services in  
134 connection with the proceedings for compensation if the services are found to be necessary.  
135 Such fees are subject to regulation as set forth in section 287.260.

136 ~~[7-]~~ **8.** Any person seeking compensation under this section who is aggrieved by the  
137 decision of the division of workers' compensation regarding his or her compensation claim, may  
138 make application for a hearing as provided in section 287.450. The procedures applicable to the  
139 processing of such hearings and determinations shall be those established by this chapter.  
140 Decisions of the administrative law judge under this section shall be binding, subject to review  
141 by either party under the provisions of section 287.480.

142 ~~[8-]~~ **9.** Pursuant to section 23.253 of the Missouri sunset act:

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

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

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

150 ~~[9-]~~ 10. The provisions of this section, unless specified, shall not be subject to other  
151 provisions of this chapter.

152 ~~[10-]~~ 11. There is hereby created in the state treasury the "Line of Duty Compensation  
153 Fund", which shall consist of moneys appropriated to the fund and any voluntary contributions,  
154 gifts, or bequests to the fund. The state treasurer shall be custodian of the fund and shall approve  
155 disbursements from the fund in accordance with sections 30.170 and 30.180. Upon  
156 appropriation, money in the fund shall be used solely for paying claims under this section.  
157 Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the  
158 fund at the end of the biennium shall not revert to the credit of the general revenue fund. The  
159 state treasurer shall invest moneys in the fund in the same manner as other funds are invested.  
160 Any interest and moneys earned on such investments shall be credited to the fund.

161 ~~[11-]~~ 12. The division shall promulgate rules to administer this section, including but  
162 not limited to the appointment of claims to multiple claimants, record retention, and procedures  
163 for information requests. Any rule or portion of a rule, as that term is defined in section 536.010,  
164 that is created under the authority delegated in this section shall become effective only if it  
165 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section  
166 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the  
167 general assembly under chapter 536 to review, to delay the effective date, or to disapprove and  
168 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and  
169 any rule proposed or adopted after June 19, 2009, shall be invalid and void.

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

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