

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 289
99TH GENERAL ASSEMBLY

Reported from the Committee on Small Business and Industry, April 13, 2017, with recommendation that the Senate Committee Substitute do pass.

0959S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.243, 287.280, 287.390, and 287.780, RSMo, and to enact in lieu thereof nine 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Section A. Sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.243, 287.280, 287.390, and 287.780, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.243, 287.280, 287.390, and 287.780, to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 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 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

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

16 States Department of Transportation, or any of its subagencies. The word
17 "employee" also shall not include any person performing services for board,
18 lodging, aid, or sustenance received from any religious, charitable, or relief
19 organization.

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

25 3. (1) In this chapter the term "injury" is hereby defined to be an injury
26 which has arisen out of and in the course of employment. An injury by accident
27 is compensable only if the accident was the prevailing factor in causing both the
28 resulting medical condition and disability. "The prevailing factor" is defined to
29 be the primary factor, in relation to any other factor, causing both the resulting
30 medical condition and disability.

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

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

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

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

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

44 (5) The terms "injury" and "personal injuries" shall mean violence to the
45 physical structure of the body and to the personal property which is used to make
46 up the physical structure of the body, such as artificial dentures, artificial limbs,
47 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
48 to replace the physical structure and such disease or infection as naturally results
49 therefrom. These terms shall in no case except as specifically provided in this
50 chapter be construed to include occupational disease in any form, nor shall they
51 be construed to include any contagious or infectious disease contracted during the

52 course of the employment, nor shall they include death due to natural causes
53 occurring while the worker is at work.

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

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

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

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

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

80 9. For the purposes of this chapter, the term "minor" means a person who
81 has not attained the age of eighteen years; except that, for the purpose of
82 computing the compensation provided for in this chapter, the provisions of section
83 287.250 shall control.

84 10. In applying the provisions of this chapter, it is the intent of the
85 legislature to reject and abrogate earlier case law interpretations on the meaning
86 of or definition of "accident", "occupational disease", "arising out of", and "in the
87 course of the employment" to include, but not be limited to, holdings in: Bennett

88 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);
89 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,
90 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
91 following those cases.

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

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

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

23 **2. Notwithstanding any other provision of law to the contrary,**

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

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

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

20 3. No compensation shall be allowed under this chapter for the injury or

21 death due to the employee's intentional self-inflicted injury, but the burden of
22 proof of intentional self-inflicted injury shall be on the employer or the person
23 contesting the claim for allowance.

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

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

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

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

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

56 (4) **Any positive test result for a nonprescribed controlled drug**

57 or the metabolites of such drug from an employee, shall give rise to a
58 rebuttable presumption, which may be rebutted by a preponderance of
59 evidence, that the tested nonprescribed controlled drug was in the
60 employee's system at the time of the accident or injury and, that the
61 injury was sustained in conjunction with the use of the tested
62 nonprescribed controlled drug if:

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

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

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

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

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

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

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

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

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

92 9. A mental injury is not considered to arise out of and in the course of

93 the employment if it resulted from any disciplinary action, work evaluation, job
94 transfer, layoff, demotion, termination or any similar action taken in good faith
95 by the employer.

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

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

7 2. The permanency of the employee's disability under sections 287.170 to
8 287.200 shall not be established, determined or adjudicated while the employee
9 is participating in rehabilitation services.

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

287.170. 1. For temporary total disability the employer shall pay
2 compensation [for not] **until the employee reaches maximum medical**
3 **improvement unless such benefits are terminated by the employee's**
4 **return to work or are terminated as otherwise specified in this chapter,**
5 **but in no event** more than four hundred weeks during the continuance of such
6 disability at the weekly rate of compensation in effect under this section on the
7 date of the injury for which compensation is being made. **In the case of an**
8 **injured employee who has reached maximum medical improvement but**
9 **is unable to return to work, such employee shall receive temporary**
10 **total disability benefits for up to but not to exceed four hundred weeks**
11 **during the continuance of such disability at the weekly rate of**
12 **compensation in effect under this section on the date of the injury for**
13 **which compensation is being made.** The amount of such compensation shall
14 be computed as follows:

15 (1) For all injuries occurring on or after September 28, 1983, but before
16 September 28, 1986, the weekly compensation shall be an amount equal to

17 sixty-six and two-thirds percent of the injured employee's average weekly
18 earnings as of the date of the injury; provided that the weekly compensation paid
19 under this subdivision shall not exceed an amount equal to seventy percent of the
20 state average weekly wage, as such wage is determined by the division of
21 employment security, as of the July first immediately preceding the date of
22 injury;

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

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

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

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

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

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

52 4. If the employee is terminated from post-injury employment based upon

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

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

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

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

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

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

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

23 (a) Eighteen years of age or under;

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

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

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

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

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

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

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

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

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

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

59 **[(6)] (7) "Law enforcement officer", any person employed by the state or**

60 a local governmental entity as a police officer, peace officer certified under
61 chapter 590, or serving as an auxiliary police officer or in some like position
62 involving the enforcement of the law and protection of the public interest at the
63 risk of that person's life;

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

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

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

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

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

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

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

96 ambulance pilot, air ambulance registered professional nurse, or
97 firefighter;

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

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

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

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

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

130 (5) If there is no individual qualifying under subdivisions (1), (2),
131 (3), or (4) of this subsection, to the surviving parent, or parents, in
132 equal shares, of the law enforcement officer, emergency medical

133 technician, air ambulance pilot, air ambulance registered professional
134 nurse, or firefighter; or

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

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

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

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

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

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

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

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

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

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

169 administrative law judge under this section shall be binding, subject to review by
170 either party under the provisions of section 287.480.

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

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

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

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

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

183 **[10.] 11.** There is hereby created in the state treasury the "Line of Duty
184 Compensation Fund", which shall consist of moneys appropriated to the fund and
185 any voluntary contributions, gifts, or bequests to the fund. The state treasurer
186 shall be custodian of the fund and shall approve disbursements from the fund in
187 accordance with sections 30.170 and 30.180. Upon appropriation, money in the
188 fund shall be used solely for paying claims under this section. Notwithstanding
189 the provisions of section 33.080 to the contrary, any moneys remaining in the
190 fund at the end of the biennium shall not revert to the credit of the general
191 revenue fund. The state treasurer shall invest moneys in the fund in the same
192 manner as other funds are invested. Any interest and moneys earned on such
193 investments shall be credited to the fund.

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

287.280. 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 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

37 chapter 537 or this chapter shall utilize a uniform experience rating plan
38 promulgated by an approved advisory organization. Such groups shall develop
39 experience ratings for their members based on the plan. Nothing in this section
40 shall relieve an employer from remitting, without any charge to the employer, the
41 employer's claims history to an approved advisory organization.

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

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

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

71 6. Self-insured trusts, as described under 8 CSR 50-3.010, may
72 invest surplus moneys from a prior trust year not needed for current

73 **obligations. Notwithstanding any provision of law to the contrary,**
74 **upon approval by the division, a self-insured trust may invest up to one**
75 **hundred percent of surplus moneys in securities designated by the**
76 **state treasurer as acceptable collateral to secure state deposits under**
77 **section 30.270.**

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

80 **[6.] 8.** No rule or portion of a rule promulgated under the authority of
81 this section shall become effective unless it has been promulgated pursuant to the
82 provisions of section 536.024.

83 **[7.] 9.** Any records submitted pursuant to this section, and pursuant to
84 any rule promulgated by the division pursuant to this section, shall be considered
85 confidential and not subject to chapter 610. Any party to a workers'
86 compensation case involving the party that submitted the records shall be able
87 to subpoena the records for use in a workers' compensation case, if the
88 information is otherwise relevant.

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

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

19 **3.** Notwithstanding the provisions of section 287.190, an employee shall
20 be afforded the option of receiving a compromise settlement as a one-time lump

21 sum payment. A compromise settlement approved by an administrative law judge
22 or the commission shall indicate the manner of payment chosen by the employee.

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

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

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

40 **7. (1) In the case of compromise settlements offered after a**
41 **claimant has reached maximum medical improvement, upon receipt of**
42 **a permanent disability rating from the employer's physician, a claimant**
43 **shall have a period of twelve months from such date to acquire a rating**
44 **from a second physician of his or her own choosing.**

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

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

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

287.780. No employer or agent shall discharge or [in any way]
2 discriminate against any employee for exercising any of his or her rights under

3 this chapter **when the exercising of such rights is the motivating factor**
4 **in the discharge or discrimination.** Any employee who has been discharged
5 or discriminated against **in such manner** shall have a civil action for damages
6 against his **or her** employer. **For purposes of this section, "motivating**
7 **factor" shall mean that the employee's exercise of his or her rights**
8 **under this chapter actually played a role in the discharge or**
9 **discrimination and had a determinative influence on the discharge or**
10 **discrimination.**

Unofficial ✓

Bill

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