

SECOND REGULAR SESSION

SENATE BILL NO. 671

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3227S.01I

AN ACT

To repeal section 287.200, RSMo, and to enact in lieu thereof two new sections relating to legal claims based on prior toxic exposure to certain substances.

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

Section A. Section 287.200, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.068 and 287.200, to read as
3 follows:

**287.068. 1. (1) Cancer contracted by a firefighter shall be
2 presumed as an occupational disease if:**

3 **(a) The firefighter is a paid or volunteer firefighter who has been
4 assigned to at least five years of hazardous duty as a firefighter;**

5 **(b) The firefighter was exposed to an agent classified by the
6 International Agency for Research on Cancer, or its successor
7 organization, as a group 1 or 2A carcinogen, or classified as a cancer
8 causing agent by the American Cancer Society, the American
9 Association for Cancer Research, the Agency for Health Care Policy and
10 Research, the American Society for Clinical Oncology, the National
11 Institute for Occupational Safety and Health, or the United States
12 National Cancer Institute;**

13 **(c) Fifteen years have not elapsed since the firefighter was last
14 assigned to hazardous duty as a firefighter;**

15 **(d) The firefighter is not seventy years of age or older at the time
16 of the diagnosis of cancer; and**

17 **(e) The cancer contracted is testicular cancer, mesothelioma,
18 multiple myeloma, non-Hodgkin's lymphoma, skin cancer, malignant
19 melanoma, brain cancer, prostate cancer, colon cancer, or leukemia.**

20 **(2) The presumption described in subdivision (1) of this**

21 subsection shall be rebuttable if:

22 (a) There is evidence that the firefighter's exposure to personal
23 use of cigarettes, tobacco products, or other conditions presenting an
24 extremely high risk for the development of the cancer alleged was more
25 than likely the prevailing factor in the cause of progression of the
26 cancer, and such exposure occurred outside the scope of employment
27 as a firefighter; or

28 (b) There is evidence that the firefighter incurred the type of
29 cancer alleged before becoming a firefighter.

30 (3) This subsection shall only apply to claims filed on or after
31 August 28, 2020.

32 (4) All benefits payable pursuant to this subsection shall only be
33 paid by the division using funds from the occupational disease fund.

34 (5) For purposes of this section, "hazardous duty" shall mean any
35 duty performed under circumstances in which an accident could result
36 in serious injury or death, such as duty performed on a high structure
37 where protective facilities are not used or on an open structure where
38 adverse conditions such as darkness, lightning, steady rain, or high
39 wind velocity exist.

40 2. The division shall prepare a report containing the following
41 information regarding presumed cancer claims described under
42 subsection 1 of this section:

- 43 (1) The number of approved claims;
44 (2) The number of disapproved claims;
45 (3) The number of active claims; and
46 (4) The cost related to claims described under subdivisions (1)
47 and (3) of this subsection.

48 3. The division shall submit the report required under subsection
49 2 of this section before August 28, 2021, and an updated report every
50 two years thereafter, to each of the following:

- 51 (1) The speaker and the minority leader of the house of
52 representatives;
53 (2) The president pro tempore and the minority leader of the
54 senate;
55 (3) The Missouri Association of Fire Chiefs, or its successor
56 organization;
57 (4) The Fire Fighters Association of Missouri, or its successor

58 organization; and

59 (5) The Missouri Municipal League, or its successor organization.

60 4. (1) There is hereby created in the state treasury the
61 "Firefighter's Occupational Disease Fund", which shall consist of money
62 collected under this section. The state treasurer shall be custodian of
63 the fund. In accordance with sections 30.170 and 30.180, the state
64 treasurer may approve disbursements. The fund shall be a dedicated
65 fund and money in the fund shall be used solely by the political
66 subdivision for the purposes of paying claims payable pursuant to this
67 section.

68 (2) Notwithstanding the provisions of section 33.080 to the
69 contrary, any moneys remaining in the fund at the end of the biennium
70 shall not revert to the credit of the general revenue fund.

71 (3) The state treasurer shall invest moneys in the fund in the
72 same manner as other funds are invested. Any interest and moneys
73 earned on such investments shall be credited to the fund.

74 (4) Any political subdivision may participate in the fund and use
75 moneys dispersed to it by the state treasurer under this section to pay
76 workers compensation awards made against a political subdivision
77 member of the fund.

78 (5) Political subdivisions who participate in the fund shall make
79 annual contributions to the fund in the amount determined by the state
80 treasurer in accordance with this section relating to rates established
81 by insurers. Participation in the fund has the same effect as purchase
82 of insurance by such political subdivision, as otherwise provided by
83 law, and shall have the same effect as a self-insurance plan. Moneys in
84 the fund shall be available for:

85 (a) The payment and settlement of all claims for which coverage
86 has been obtained by any political subdivision participating in the fund
87 in accordance with coverages offered by political subdivisions relating
88 to testicular cancer, mesothelioma, multiple myeloma, non-Hodgkin's
89 lymphoma, skin cancer, malignant melanoma, brain cancer, prostate
90 cancer, colon cancer, or leukemia awards pursuant to subdivision (1)
91 of subsection 6 of section 287.200;

92 (b) Attorney's fees and expenses incurred in the administration
93 and representation of the fund.

94 (6) Each participating political subdivision shall notify the state

95 treasurer within seven working days of the time notice is received that
96 a claim for benefits has been made against the political
97 subdivision. The political subdivision shall supply information to the
98 state treasurer concerning any claim upon request. It shall also notify
99 the state treasurer upon the closing of any claim.

100 (7) Any political subdivision which does not participate in the
101 fund shall provide an option for firefighters to make annual
102 contributions to the fund in the amount determined by the state
103 treasurer in accordance with this section relating to rates established
104 by insurers.

105 (8) Federal grants, private donations, appropriations made by
106 the general assembly, and any other moneys so designated shall be
107 deposited in the fund.

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

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

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

24 immediately preceding the date of injury;

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

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

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

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

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

58 4. For all claims filed on or after January 1, 2014, for occupational
59 diseases due to toxic exposure which result in a permanent total disability or

60 death, benefits in this chapter shall be provided as follows:

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

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

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

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

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

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

92 (5) Notwithstanding any other provision of this chapter to the contrary,
93 should the employee die before the additional benefits provided for in subdivision
94 (2) and paragraph (a) of subdivision (3) of this subsection are paid, the additional
95 benefits are payable to the employee's spouse or children, natural or adopted,

96 legitimate or illegitimate, in addition to benefits provided under section 287.240.
97 If there is no surviving spouse or children and the employee has received less
98 than the additional benefits provided for in subdivision (2) and paragraph (a) of
99 subdivision (3) of this subsection the remainder of such additional benefits shall
100 be paid as a single payment to the estate of the employee;

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

104 5. Any employee who obtains benefits under subdivision (2) of subsection
105 4 of this section for acquiring asbestosis who later obtains an award for
106 mesothelioma shall not receive more benefits than such employee would receive
107 having only obtained benefits for mesothelioma under this section.

108 **6. For all claims filed on or after August 28, 2020, for**
109 **occupational diseases of firefighters due to toxic exposure which result**
110 **in a permanent total disability or death, benefits in this chapter shall**
111 **be as provided in this subsection. In cases where occupational diseases**
112 **of firefighters due to toxic exposure are diagnosed to be testicular**
113 **cancer, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma,**
114 **skin cancer, malignant melanoma, brain cancer, prostate cancer, colon**
115 **cancer, or leukemia:**

116 (1) For political subdivisions that have elected to accept
117 testicular cancer, mesothelioma, multiple myeloma, non-Hodgkin's
118 lymphoma, skin cancer, malignant melanoma, brain cancer, prostate
119 cancer, colon cancer, or leukemia liability under this subsection, an
120 additional amount of three hundred percent of the state's average
121 weekly wage for two hundred twelve weeks shall be paid by the
122 political subdivision. Political subdivisions that elect to accept
123 testicular cancer, mesothelioma, multiple myeloma, non-Hodgkin's
124 lymphoma, skin cancer, malignant melanoma, brain cancer, prostate
125 cancer, colon cancer, or leukemia liability under the subsection may do
126 so by either insuring their liability, by qualifying as a self-insurer, or
127 by becoming a member of a group insurance pool. A group of political
128 subdivisions may enter into an agreement to pool their liabilities under
129 this subsection. If such group is joined, individual members shall not
130 be required to qualify as individual self-insurers. Such group shall
131 comply with section 287.068. In order for a political subdivision to
132 make such an election, the political subdivision shall provide the state

133 treasurer with notice of such an election in a manner established by
134 the state treasurer; or

135 (2) For political subdivisions who reject testicular cancer,
136 mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, skin
137 cancer, malignant melanoma, brain cancer, prostate cancer, colon
138 cancer, or leukemia liability under this subsection, then the exclusive
139 remedy provisions under section 287.120 shall not apply to such
140 liability.

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