

FIRST REGULAR SESSION

# SENATE BILL NO. 316

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time January 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1587S.011

## AN ACT

To repeal section 287.200, RSMo, and to enact in lieu thereof one new section relating to permanent total disability benefits payable pursuant to workers' compensation laws.

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

Section A. Section 287.200, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 287.200, to read as follows:

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

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

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

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

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

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