

FIRST REGULAR SESSION

SENATE BILL NO. 382

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

0130S.01H

ADRIANE D. CROUSE, Secretary

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Section A. Section 287.200, RSMo, is repealed and one new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

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

12 (1) For all injuries occurring on or after September
13 28, 1983, but before September 28, 1986, the weekly
14 compensation shall be an amount equal to sixty-six and two-
15 thirds percent of the injured employee's average weekly
16 earnings during the year immediately preceding the injury,
17 as of the date of the injury; provided that the weekly
18 compensation paid under this subdivision shall not exceed an

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

19 amount equal to seventy percent of the state average weekly
20 wage, as such wage is determined by the division of
21 employment security, as of the July first immediately
22 preceding the date of injury;

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

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

41 (4) For all injuries occurring on or after August 28,
42 1991, the weekly compensation shall be an amount equal to
43 sixty-six and two-thirds percent of the injured employee's
44 average weekly earnings as of the date of the injury;
45 provided that the weekly compensation paid under this
46 subdivision shall not exceed an amount equal to one hundred
47 five percent of the state average weekly wage;

48 (5) For all injuries occurring on or after September
49 28, 1981, the weekly compensation shall in no event be less
50 than forty dollars per week.

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

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

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

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

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

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

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

112 (b) For employers who reject mesothelioma under this
113 subsection, then the exclusive remedy provisions under

114 section 287.120 shall not apply to such liability. The
115 provisions of this paragraph shall expire on December 31,
116 2038; and

117 (4) The provisions of subdivision (2) and paragraph
118 (a) of subdivision (3) of this subsection shall not be
119 subject to suspension of benefits as provided in subsection
120 3 of this section; and

121 (5) Notwithstanding any other provision of this
122 chapter to the contrary, should the employee die before the
123 additional benefits provided for in subdivision (2) and
124 paragraph (a) of subdivision (3) of this subsection are
125 paid, the additional benefits are payable to the employee's
126 spouse or **dependent** children, natural or adopted, legitimate
127 or illegitimate, in addition to benefits provided under
128 section 287.240[. If there is no surviving spouse or
129 children and the employee has received less than the
130 additional benefits provided for in subdivision (2) and
131 paragraph (a) of subdivision (3) of this subsection the
132 remainder of such additional benefits shall be paid as a
133 single payment to the estate of the employee]; **and**

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

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

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