

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 66
99TH GENERAL ASSEMBLY

0250H.06C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200, 287.203, 287.243, 287.280, 287.390, and 287.780, RSMo, and to enact in lieu thereof eleven 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, 287.200, 287.203,
2 287.243, 287.280, 287.390, and 287.780, RSMo, are repealed and eleven new sections enacted
3 in lieu thereof, to be known as sections 287.020, 287.037, 287.120, 287.149, 287.170, 287.200,
4 287.203, 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
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,
3 express or implied, oral or written, or under any appointment or election, including executive
4 officers of corporations. Except as otherwise provided in section 287.200, any reference to any
5 employee who has been injured shall, when the employee is dead, also include his **or her**
6 dependents, and other persons to whom compensation may be payable. The word "employee"
7 shall also include all minors who work for an employer, whether or not such minors are
8 employed in violation of law, and all such minors are hereby made of full age for all purposes
9 under, in connection with, or arising out of this chapter. The word "employee" shall not include
10 an individual who is the owner, as defined in subdivision (42) of section 301.010, and operator
11 of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier
12 operating within a commercial zone as defined in section 390.020 or 390.041, or operating under

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.

13 a certificate issued by the Missouri department of transportation or by the United States
14 Department of Transportation, or any of its subagencies. The word "employee" also shall not
15 include any person performing services for board, lodging, aid, or sustenance received from any
16 religious, charitable, or relief organization.

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

21 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
22 out of and in the course of employment. An injury by accident is compensable only if the
23 accident was the prevailing factor in causing both the resulting medical condition and disability.
24 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
25 both the resulting medical condition and disability.

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

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

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

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

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

37 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
38 structure of the body and to the personal property which is used to make up the physical structure
39 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other
40 prostheses which are placed in or on the body to replace the physical structure and such disease
41 or infection as naturally results therefrom. These terms shall in no case except as specifically
42 provided in this chapter be construed to include occupational disease in any form, nor shall they
43 be construed to include any contagious or infectious disease contracted during the course of the
44 employment, nor shall they include death due to natural causes occurring while the worker is at
45 work.

46 4. "Death" when mentioned as a basis for the right to compensation means only death
47 resulting from such violence and its resultant effects occurring within three hundred weeks after

48 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
49 shall not be applicable.

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

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

60 7. As used in this chapter and all acts amendatory thereof, the term "commission" shall
61 hereafter be construed as meaning and referring exclusively to the labor and industrial relations
62 commission of Missouri, and the term "director" shall hereafter be construed as meaning the
63 director of the department of insurance, financial institutions and professional registration of the
64 state of Missouri or such agency of government as shall exercise the powers and duties now
65 conferred and imposed upon the department of insurance, financial institutions and professional
66 registration of the state of Missouri.

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

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

72 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
73 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
74 "occupational disease", "arising out of", and "in the course of the employment" to include, but
75 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d
76 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and
77 *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,
78 or following those cases.

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

83 **12. For the purposes of this chapter, "maximum medical improvement" shall mean**
84 **the point at which the injured employee's medical condition has stabilized and can no**
85 **longer reasonably improve with additional medical care, as determined within a reasonable**
86 **degree of medical certainty.**

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
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.

84 **11. The provisions of subsections 1 and 2 of this section govern all civil lawsuits or**
85 **legal causes of action filed on or after January 1, 2014.**

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

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

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

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.**

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

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

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

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

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

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

34 2. Permanent total disability benefits that have accrued through the date of the injured
35 employee's death are the only permanent total disability benefits that are to be paid in accordance
36 with section 287.230. The right to unaccrued compensation for permanent total disability of an

37 injured employee terminates on the date of the injured employee's death in accordance with
38 section 287.230, and does not survive to the injured employee's dependents, estate, or other
39 persons to whom compensation might otherwise be payable.

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

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

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

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

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

63 (a) For employers that have elected to accept mesothelioma liability under this
64 subsection, an additional amount of three hundred percent of the state's average weekly wage for
65 two hundred twelve weeks shall be paid by the employer or group of employers such employer
66 is a member of. Employers that elect to accept mesothelioma liability under this subsection may
67 do so by either insuring their liability, by qualifying as a self-insurer, or by becoming a member
68 of a group insurance pool. A group of employers may enter into an agreement to pool their
69 liabilities under this subsection. If such group is joined, individual members shall not be
70 required to qualify as individual self-insurers. Such group shall comply with section 287.223.
71 In order for an employer to make such an election, the employer shall provide the department

72 with notice of such an election in a manner established by the department. The provisions of this
73 paragraph shall expire on December 31, 2038; or

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

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

80 (5) Notwithstanding any other provision of this chapter to the contrary, should the
81 employee die before the additional benefits provided for in subdivision (2) and paragraph (a) of
82 subdivision (3) of this subsection are paid, the additional benefits are payable to the employee's
83 spouse or children, natural or adopted, legitimate or illegitimate, in addition to benefits provided
84 under section 287.240. If there is no surviving spouse or children and the employee has received
85 less than the additional benefits provided for in subdivision (2) and paragraph (a) of subdivision
86 (3) of this subsection the remainder of such additional benefits shall be paid as a single payment
87 to the estate of the employee;

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

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

287.203. Whenever the employer has provided compensation under section 287.170,
2 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee
3 of such termination and shall advise the employee of the reason for such termination. If the
4 employee disputes the termination of such benefits, the employee may request a hearing before
5 the division and the division shall set the matter for hearing within ~~sixty~~ **thirty** days of such
6 request and the division shall hear the matter on the date of hearing and no continuances or
7 delays may be granted except upon a showing of good cause or by consent of the parties. The
8 division shall render a decision within thirty days of the date of hearing. If the division or the
9 commission determines that any proceedings have been brought, prosecuted, or defended without
10 reasonable grounds, the division may assess the whole cost of the proceedings upon the party
11 who brought, prosecuted, or defended them.

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

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

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

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

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

19 (a) **Eighteen years of age or under;**

20 (b) **Over eighteen years of age and a student, as defined in 5 U.S.C. Section 8101;**

21 **or**

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

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

27 ~~[(4)]~~ (5) "Firefighter", any person, including a volunteer firefighter, employed by the
28 state or a local governmental entity as an employer defined under subsection 1 of section
29 287.030, or otherwise serving as a member or officer of a fire department either for the purpose
30 of the prevention or control of fire or the underwater recovery of drowning victims;

31 ~~[(5)]~~ (6) "Killed in the line of duty", when any person defined in this section loses his
32 or her life when:

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

34 (b) The law enforcement officer, emergency medical technician, air ambulance pilot, air
35 ambulance registered professional nurse, or firefighter is in the active performance of his or her
36 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.

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an
2 individual or group basis, insure their entire liability under the workers' compensation law; and
3 may insure in whole or in part their employer liability, under a policy of insurance or a
4 self-insurance plan, except as hereafter provided, with some insurance carrier authorized to
5 insure such liability in this state, except that an employer or group of employers may themselves
6 carry the whole or any part of the liability without insurance upon satisfying the division of their
7 ability to do so. If an employer or group of employers have qualified to self-insure their liability
8 under this chapter, the division of workers' compensation may, if it finds after a hearing that the
9 employer or group of employers are willfully and intentionally violating the provisions of this
10 chapter with intent to defraud their employees of their right to compensation, suspend or revoke
11 the right of the employer or group of employers to self-insure their liability. If the employer or

12 group of employers fail to comply with this section, an injured employee or his **or her**
13 dependents may elect after the injury either to bring an action against such employer or group
14 of employers to recover damages for personal injury or death and it shall not be a defense that
15 the injury or death was caused by the negligence of a fellow servant, or that the employee had
16 assumed the risk of the injury or death, or that the injury or death was caused to any degree by
17 the negligence of the employee; or to recover under this chapter with the compensation payments
18 commuted and immediately payable; or, if the employee elects to do so, he or she may file a
19 request with the division for payment to be made for medical expenses out of the second injury
20 fund as provided in subsection 7 of section 287.220. If the employer or group of employers are
21 carrying their own insurance, on the application of any person entitled to compensation and on
22 proof of default in the payment of any installment, the division shall require the employer or
23 group of employers to furnish security for the payment of the compensation, and if not given, all
24 other compensation shall be commuted and become immediately payable; provided, that
25 employers engaged in the mining business shall be required to insure only their liability
26 hereunder to the extent of the equivalent of the maximum liability under this chapter for ten
27 deaths in any one accident, but the employer or group of employers may carry their own risk for
28 any excess liability. When a group of employers enter into an agreement to pool their liabilities
29 under this chapter, individual members will not be required to qualify as individual self-insurers.

30 2. Groups of employers qualified to insure their liability pursuant to chapter 537 or this
31 chapter shall utilize a uniform experience rating plan promulgated by an approved advisory
32 organization. Such groups shall develop experience ratings for their members based on the plan.
33 Nothing in this section shall relieve an employer from remitting, without any charge to the
34 employer, the employer's claims history to an approved advisory organization.

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

39 4. Any group of employers that have qualified to self-insure their liability pursuant to
40 this chapter shall file with the division premium rates, based on pure premium rate data, adjusted
41 for loss development and loss trending as filed by the advisory organization with the department
42 of insurance, financial institutions and professional registration pursuant to section 287.975, plus
43 any estimated expenses and other factors or based on average rate classifications calculated by
44 the department of insurance, financial institutions and professional registration as taken from the
45 premium rates filed by the twenty insurance companies providing the greatest volume of workers'
46 compensation insurance coverage in this state. The rate is inadequate if funds equal to the full
47 ultimate cost of anticipated losses and loss adjustment expenses are not produced when the

48 prospective loss costs are applied to anticipated payrolls. The provisions of this subsection shall
49 not apply to those political subdivisions of this state that have qualified to self-insure their
50 liability pursuant to this chapter as authorized by section 537.620 on an assessment plan. Any
51 such group may file with the division a composite rate for all coverages provided under that
52 section.

53 **5. When considering applications for new trust self-insurers, as described under**
54 **8 CSR 50-3.010, the division shall require proof of payment by each member of not less**
55 **than twenty-five percent of the estimated annual premium; except that, for new members**
56 **who wish to join an existing trust self-insurer during the policy year rather than at the**
57 **beginning of the policy year, the division shall require proof of payment of the lesser of the**
58 **estimated premium of three months or the estimated premium for the balance of the policy**
59 **year.**

60 **6. Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus**
61 **moneys from a prior trust year not needed for current obligations. Notwithstanding any**
62 **provision of law to the contrary, upon approval by the division, a self-insured trust may**
63 **invest up to one hundred percent of surplus moneys in securities designated by the state**
64 **treasurer as acceptable collateral to secure state deposits under section 30.270.**

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

67 ~~6.]~~ **8. No rule or portion of a rule promulgated under the authority of this section shall**
68 **become effective unless it has been promulgated pursuant to the provisions of section 536.024.**

69 ~~7.]~~ **9. Any records submitted pursuant to this section, and pursuant to any rule**
70 **promulgated by the division pursuant to this section, shall be considered confidential and not**
71 **subject to chapter 610. Any party to a workers' compensation case involving the party that**
72 **submitted the records shall be able to subpoena the records for use in a workers' compensation**
73 **case, if the information is otherwise relevant.**

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

10 influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily
11 agrees to accept the terms of the agreement.

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

16 3. Notwithstanding the provisions of section 287.190, an employee shall be afforded the
17 option of receiving a compromise settlement as a one-time lump sum payment. A compromise
18 settlement approved by an administrative law judge or the commission shall indicate the manner
19 of payment chosen by the employee.

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

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

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

35 **7. (1) In the case of compromise settlements offered after a claimant has reached**
36 **maximum medical improvement, upon receipt of a permanent disability rating from the**
37 **employer's physician, a claimant shall have a period of twelve months from such date to**
38 **acquire a rating from a second physician of his or her own choosing.**

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

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

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

 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.**

✓