

SECOND REGULAR SESSION

SENATE BILL NO. 767

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

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

ADRIANE D. CROUSE, Secretary.

3702S.01I

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Section A. Section 287.200, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.200, to read as follows: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 during the continuance of such disability from the date of maximum medical improvement for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom compensation may be payable as provided in subsection 1 of section 287.020. The amount of such compensation shall be computed as follows:

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

(2) For all injuries occurring on or after September 28, 1986, but before 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; **and**

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.

✓

Copy