

FIRST REGULAR SESSION

HOUSE BILL NO. 123

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT.

0245H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 287.200, RSMo, and to enact in lieu thereof one new section relating to occupational disease benefits.

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Section A. Section 287.200, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.200, to read as follows: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 and two-thirds percent of the injured employee's average weekly earnings during the year immediately preceding the

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.

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

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.

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