

SECOND REGULAR SESSION

HOUSE BILL NO. 2641

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MARQUART.

5377H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 287.250, RSMo, and to enact in lieu thereof one new section relating to workers' compensation benefits.

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

Section A. Section 287.250, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.250, to read as follows:

287.250. 1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly earnings which will serve as the basis for compensation provided for in this chapter shall be as follows:

(1) If the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(3) If the wages are fixed by the year, the average weekly wage shall be the yearly wage fixed divided by fifty-two;

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence

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 for a calendar week. If the employee commenced employment on a day other than the
19 beginning of a calendar week, such calendar week and the wages earned during such week
20 shall be excluded in computing the average weekly wage pursuant to this subdivision;

21 (5) If the employee has been employed less than two calendar weeks immediately
22 preceding the injury, the employee's weekly wage shall be considered to be equivalent to the
23 average weekly wage prevailing in the same or similar employment at the time of the injury,
24 except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon
25 multiplied by the number of weekly hours scheduled shall be the employee's average weekly
26 wage;

27 (6) If the hourly wage has not been fixed or cannot be ascertained, or the employee
28 earned no wage, the wage for the purpose of calculating compensation shall be taken to be the
29 usual wage for similar services where such services are rendered by paid employees of the
30 employer or any other employer;

31 (7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this
32 subsection, an employee shall be considered to have been actually employed for only those
33 weeks in which labor is actually performed by the employee for the employer and wages are
34 actually paid by the employer as compensation for such labor.

35 2. For purposes of this section, the term "gross wages" includes, in addition to money
36 payments for services rendered, the reasonable value of board, rent, housing, lodging or
37 similar advance received from the employer, except if such benefits continue to be provided
38 during the period of the disability, then the value of such benefits shall not be considered in
39 calculating the average weekly wage of the employee. The term "wages", as used in this
40 section, includes the value of any gratuities received in the course of employment from
41 persons other than the employer to the extent that such gratuities are reported for income tax
42 purposes. "Wages", as used in this section, does not include fringe benefits such as
43 retirement, pension, health and welfare, life insurance, training, Social Security or other
44 employee or dependent benefit plan furnished by the employer for the benefit of the
45 employee. Any wages paid to helpers or any money paid by the employer to the employee to
46 cover any special expenses incurred by the employee because of the nature of his employment
47 shall not be included in wages.

48 3. If an employee is hired by the employer for less than the number of hours per week
49 needed to be classified as a full-time or regular employee, benefits computed for purposes of
50 this chapter for permanent partial disability, permanent total disability and death benefits shall
51 be based upon the average weekly wage of a full-time or regular employee engaged by the
52 employer to perform work of the same or similar nature and at the number of hours per week
53 required by the employer to classify the employee as a full-time or regular employee, but such
54 computation shall not be based on less than thirty hours per week.

55 4. If pursuant to this section the average weekly wage cannot fairly and justly be
56 determined by the formulas provided in subsections 1 to 3 of this section, the division or the
57 commission may determine the average weekly wage in such manner and by such method as,
58 in the opinion of the division or the commission, based upon the exceptional facts presented,
59 fairly determine such employee's average weekly wage.

60 5. In computing the compensation to be paid to an employee, who, before the injury
61 for which the employee claims compensation, was disabled and drawing compensation under
62 the provisions of this chapter, the compensation for each subsequent injury shall be
63 apportioned according to the proportion of incapacity and disability caused by the respective
64 injuries which the employee may have suffered.

65 6. For purposes of establishing a rate of compensation applicable only to permanent
66 partial disability, permanent total disability and death benefits, pursuant to this chapter, the
67 average weekly wage for an employee who is under the age of twenty-one years shall be
68 adjusted to take into consideration the increased earning power of such employee until she or
69 he attains the age of twenty-one years and the average weekly wage for an employee who is
70 an apprentice or a trainee, and whose earnings would reasonably be expected to increase,
71 shall be adjusted to reflect a level of expected increase, based upon completion of
72 apprenticeship or traineeship, provided that such adjustment of the average weekly wage shall
73 not consider expected increase for a period occurring more than three years after the date of
74 the injury.

75 7. In all cases in which it is found by the division or the commission that the employer
76 knowingly employed a minor in violation of the child labor laws of this state, a fifty percent
77 additional compensation shall be allowed.

78 8. For an employee with multiple employments, as to the employee's entitlement to
79 any temporary total or temporary partial disability benefits only pursuant to subsection 9 of
80 section 287.220, and for no other purposes, the employee's total average weekly wage shall be
81 equal to the sum of the total of the average weekly wage computed separately for each
82 employment pursuant to the provisions of this section to which the employee is unable to
83 return because of this injury.

84 9. The parties, by agreement and with approval of an administrative law judge, legal
85 advisor or the commission, may enter into a compromise lump sum settlement in either
86 permanent total or permanent partial disability cases which prorates the lump sum settlement
87 over the life expectancy of the injured worker. When such an agreement has been approved,
88 neither the weekly compensation rate paid throughout the case nor the maximum statutory
89 weekly rate applicable to the injury shall apply. No compensation rate shall exceed the
90 maximum statutory weekly rate as of the date of the injury. Instead, the prorated rate set forth

91 in the approved settlement documents shall control and become the rate for that case. This
92 section shall be retroactive in effect.

93 **10. In the case of a volunteer firefighter as defined under section 320.333 or a**
94 **volunteer emergency services responder, the compensation benefit shall be based on the**
95 **average weekly wage in such volunteer's regular employment, only to the extent that the**
96 **temporary total disability prohibits the volunteer from performing the job duties of**
97 **such volunteer's regular employment. If the average weekly wage has not been fixed or**
98 **cannot be ascertained, or the volunteer firefighter or volunteer emergency services**
99 **responder earned no wage, for the purpose of calculating compensation, the hourly**
100 **wage shall be the Missouri minimum wage multiplied by forty hours per week, the total**
101 **of which shall be the volunteer's average weekly wage in such volunteer's regular**
102 **employment.**

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