

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 72
103RD GENERAL ASSEMBLY

0342H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 287.243 and 287.250, RSMo, and to enact in lieu thereof two new sections relating to benefits for certain first responders, with an emergency clause for a certain section.

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

Section A. Sections 287.243 and 287.250, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.243 and 287.250, to read as follows:

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
5 with sections 190.001 to 190.245 and corresponding regulations applicable to air ambulances
6 adopted by the department of health and senior services;

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

13 (3) "Air ambulance registered respiratory therapist", a person licensed as a registered
14 respiratory therapist in accordance with sections 334.800 to 334.930 and corresponding
15 regulations adopted by the state board for respiratory care, who provides respiratory therapy
16 services in conjunction with an air ambulance program that is certified in accordance with
17 sections 190.001 to 190.245 and corresponding regulations applicable to such programs;

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 (4) "Child", any natural, illegitimate, adopted, or posthumous child or stepchild of a
19 deceased public safety officer who, at the time of the public safety officer's fatality is:

20 (a) Eighteen years of age or under;

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

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

24 (5) "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 (6) "Firefighter", any person, including a volunteer firefighter, employed by the state
28 or a local governmental entity as an employer defined under subsection 1 of section 287.030,
29 or otherwise serving as a member or officer of a fire department either for the purpose of the
30 prevention or control of fire or the underwater recovery of drowning victims;

31 (7) "Flight crew member", an individual engaged in flight responsibilities with an air
32 ambulance licensed in accordance with sections 190.001 to 190.245 and corresponding
33 regulations applicable to such programs;

34 (8) "Killed in the line of duty", when any person defined in this section loses his or
35 her life when:

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

37 (b) The public safety officer is in the active performance of his or her duties in his or
38 her respective profession and there is a relationship between the accident or commission of
39 the act of violence and the performance of the duty, even if the individual is off duty; the
40 public safety officer is traveling to or from employment; or the public safety officer is taking
41 any meal break or other break which takes place while that individual is on duty;

42 (c) Death is the natural and probable consequence of the injury; and

43 (d) Death occurs within three hundred weeks from the date the injury was received.
44

45 The term excludes death resulting from the willful misconduct or intoxication of the public
46 safety officer. The division of workers' compensation shall have the burden of proving such
47 willful misconduct or intoxication;

48 (9) "Law enforcement officer", any person employed by the state or a local
49 governmental entity as a police officer, peace officer certified under chapter 590, or serving as
50 an auxiliary police officer or in some like position involving the enforcement of the law and
51 protection of the public interest at the risk of that person's life;

52 (10) "Local governmental entity", includes counties, municipalities, townships, board
53 or other political subdivision, cities under special charter, or under the commission form of
54 government, fire protection districts, ambulance districts, and municipal corporations;

55 (11) "Public safety officer", any law enforcement officer, firefighter, uniformed
56 employee of the office of the state fire marshal, emergency medical technician, police officer,
57 capitol police officer, parole officer, probation officer, state correctional employee, water
58 safety officer, park ranger, conservation officer, or highway patrolman employed by the state
59 of Missouri or a political subdivision thereof who is killed in the line of duty or any
60 emergency medical technician, air ambulance pilot, air ambulance registered professional
61 nurse, air ambulance registered respiratory therapist, or flight crew member who is killed in
62 the line of duty;

63 (12) "State", the state of Missouri and its departments, divisions, boards, bureaus,
64 commissions, authorities, and colleges and universities;

65 (13) "Volunteer firefighter", a person having principal employment other than as a
66 firefighter, but who is carried on the rolls of a regularly constituted fire department either for
67 the purpose of the prevention or control of fire or the underwater recovery of drowning
68 victims, the members of which are under the jurisdiction of the corporate authorities of a city,
69 village, incorporated town, or fire protection district. Volunteer firefighter shall not mean an
70 individual who volunteers assistance without being regularly enrolled as a firefighter.

71 3. (1) A claim for compensation under this section shall be filed by survivors of the
72 deceased with the division of workers' compensation not later than one year from the date of
73 death of a public safety officer. If a claim is made within one year of the date of death of a
74 public safety officer killed in the line of duty, compensation shall be paid, if the division finds
75 that the claimant is entitled to compensation under this section.

76 (2) The amount of compensation paid to the claimant shall be twenty-five thousand
77 dollars, subject to appropriation, for death occurring on or after June 19, 2009.

78 4. Any compensation awarded under the provisions of this section shall be distributed
79 as follows:

80 (1) To the surviving spouse of the public safety officer if there is no child who
81 survived the public safety officer;

82 (2) Fifty percent to the surviving child, or children, in equal shares, and fifty percent
83 to the surviving spouse if there is at least one child who survived the public safety officer, and
84 a surviving spouse of the public safety officer;

85 (3) To the surviving child, or children, in equal shares, if there is no surviving spouse
86 of the public safety officer;

87 (4) If there is no surviving spouse of the public safety officer and no surviving child:

88 (a) To the surviving individual, or individuals, in shares per the designation or,
89 otherwise, in equal shares, designated by the public safety officer to receive benefits under
90 this subsection in the most recently executed designation of beneficiary of the public safety
91 officer on file at the time of death with the public safety agency, organization, or unit; or

92 (b) To the surviving individual, or individuals, in equal shares, designated by the
93 public safety officer to receive benefits under the most recently executed life insurance policy
94 of the public safety officer on file at the time of death with the public safety agency,
95 organization, or unit if there is no individual qualifying under paragraph (a) **of this**
96 **subdivision**;

97 (5) To the surviving parent, or parents, in equal shares, of the public safety officer if
98 there is no individual qualifying under subdivision (1), (2), (3), or (4) of this subsection; or

99 (6) To the surviving individual, or individuals, in equal shares, who would qualify
100 under the definition of the term "child" but for age if there is no individual qualifying under
101 subdivision (1), (2), (3), (4), or (5) of this subsection.

102 5. Notwithstanding subsection 3 of this section, no compensation is payable under
103 this section unless a claim is filed within the time specified under this section setting forth:

104 (1) The name, address, and title or designation of the position in which the public
105 safety officer was serving at the time of his or her death;

106 (2) The name and address of the claimant;

107 (3) A full, factual account of the circumstances resulting in or the course of events
108 causing the death at issue; and

109 (4) Such other information that is reasonably required by the division.
110

111 When a claim is filed, the division of workers' compensation shall make an investigation for
112 substantiation of matters set forth in the application.

113 6. The compensation provided for under this section is in addition to, and not
114 exclusive of, any pension rights, death benefits, or other compensation the claimant may
115 otherwise be entitled to by law.

116 7. Neither employers nor workers' compensation insurers shall have subrogation
117 rights against any compensation awarded for claims under this section. Such compensation
118 shall not be assignable, shall be exempt from attachment, garnishment, and execution, and
119 shall not be subject to setoff or counterclaim, or be in any way liable for any debt, except that
120 the division or commission may allow as lien on the compensation, reasonable attorney's fees
121 for services in connection with the proceedings for compensation if the services are found to
122 be necessary. Such fees are subject to regulation as set forth in section 287.260.

123 8. Any person seeking compensation under this section who is aggrieved by the
124 decision of the division of workers' compensation regarding his or her compensation claim,
125 may make application for a hearing as provided in section 287.450. The procedures
126 applicable to the processing of such hearings and determinations shall be those established by
127 this chapter. Decisions of the administrative law judge under this section shall be binding,
128 subject to review by either party under the provisions of section 287.480.

129 9. Pursuant to section 23.253 of the Missouri sunset act:

130 (1) The provisions of the ~~[new]~~ program authorized under this section shall
131 automatically sunset ~~[six]~~ **twelve** years after ~~[June 19, 2019]~~ **June 30, 2025**, unless
132 reauthorized by an act of the general assembly; and

133 (2) If such program is reauthorized, the program authorized under this section shall
134 automatically sunset twelve years after the effective date of the reauthorization of this section;
135 and

136 (3) This section shall terminate on September first of the calendar year immediately
137 following the calendar year in which the program authorized under this section is sunset.

138 10. The provisions of this section, unless specified, shall not be subject to other
139 provisions of this chapter.

140 11. There is hereby created in the state treasury the "Line of Duty Compensation
141 Fund", which shall consist of moneys appropriated to the fund and any voluntary
142 contributions, gifts, or bequests to the fund. The state treasurer shall be custodian of the
143 fund and shall approve disbursements from the fund in accordance with sections 30.170 and
144 30.180. Upon appropriation, money in the fund shall be used solely for paying claims under
145 this section. Notwithstanding the provisions of section 33.080 to the contrary, any moneys
146 remaining in the fund at the end of the biennium shall not revert to the credit of the general
147 revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other
148 funds are invested. Any interest and moneys earned on such investments shall be credited to
149 the fund.

150 12. The division shall promulgate rules to administer this section, including but not
151 limited to the appointment of claims to multiple claimants, record retention, and procedures
152 for information requests. Any rule or portion of a rule, as that term is defined in section
153 536.010, that is created under the authority delegated in this section shall become effective
154 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,
155 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
156 vested with the general assembly under chapter 536 to review, to delay the effective date, or
157 to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
158 rulemaking authority and any rule proposed or adopted after June 19, 2009, shall be invalid
159 and void.

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

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

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

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

10 (4) If the wages were fixed by the day, hour, or by the output of the employee, the
11 average weekly wage shall be computed by dividing by thirteen the wages earned while
12 actually employed by the employer in each of the last thirteen calendar weeks immediately
13 preceding the week in which the employee was injured or if actually employed by the
14 employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a
15 week, during which the employee was actually employed by the employer. For purposes of
16 computing the average weekly wage pursuant to this subdivision, absence of five regular or
17 scheduled work days, even if not in the same calendar week, shall be considered as absence
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] 11

80 of section 287.220, and for no other purposes, the employee's total average weekly wage shall
81 be 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 **accident or injury prohibits the volunteer from performing the job duties of such**
97 **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 volunteer's**
100 **average weekly wage in such volunteer's regular employment shall be the total of the**
101 **Missouri hourly minimum wage multiplied by forty hours per week.**

Section B. Because immediate action is necessary to reauthorize the line of duty
2 compensation act before expiration to prevent a lapse in coverage and ensure the continued
3 payment of benefits, the repeal and reenactment of section 287.243 of section A of this act is
4 deemed necessary for the immediate preservation of the public health, welfare, peace, and
5 safety, and is hereby declared to be an emergency act within the meaning of the constitution,
6 and the repeal and reenactment of section 287.243 of section A of this act shall be in full force
7 and effect upon its passage and approval.

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