

SECOND REGULAR SESSION

HOUSE BILL NO. 1709

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VEIT.

3921H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation.

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

Section A. Sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.200, 287.470, 287.610, 287.615, 287.812, 287.835, and 621.045, to read as follows: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;

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.

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
17 of 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
20 weekly wage, as such wage is determined by the division of employment security, as of the
21 July first 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
25 weekly compensation paid under this subdivision shall not exceed an amount equal to one
26 hundred percent of the state average weekly wage;

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

32 (5) For all injuries occurring on or after September 28, 1981, the weekly
33 compensation 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
36 accordance with section 287.230. The right to unaccrued compensation for permanent total
37 disability of an injured employee terminates on the date of the injured employee's death in
38 accordance with section 287.230, and does not survive to the injured employee's dependents,
39 estate, or other persons to whom compensation might otherwise be payable.

40 3. **(1)** All claims for permanent total disability shall be determined in accordance
41 with the facts. ~~[When an injured employee receives an award for permanent total disability~~
42 ~~but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is~~
43 ~~restored to his or her regular work or its equivalent, the life payment mentioned in subsection~~
44 ~~1 of this section shall be suspended during the time in which the employee is restored to his or~~
45 ~~her regular work or its equivalent.]~~ The employer and the division shall keep the file open in
46 the case during the lifetime of any injured employee who has received an award of permanent
47 total disability.

48 **(2)** When an injured employee receives an award for permanent total disability
49 but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee
50 is restored to his or her regular work or its equivalent, the life payment mentioned in
51 subsection 1 of this section shall be suspended during the time in which the employee is

52 **restored to his or her regular work or its equivalent.** In any case where the life payment is
53 suspended under this ~~[subsection]~~ **subdivision**, the commission may at reasonable times
54 review the case and either the employee or the employer may request an informal conference
55 with the commission relative to the resumption of the employee's weekly life payment in the
56 case.

57 **(3) Upon the filing of a written agreement signed by the claimant and his or her**
58 **attorney, the commission shall change the name, information, or fee arrangement of the**
59 **attorney or law firm associated with the claimant's case.**

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

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

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

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

72 (a) For employers that have elected to accept mesothelioma liability under this
73 subsection, an additional amount of three hundred percent of the state's average weekly wage
74 for two hundred twelve weeks shall be paid by the employer or group of employers such
75 employer is a member of. Employers that elect to accept mesothelioma liability under this
76 subsection may do so by either insuring their liability, by qualifying as a self-insurer, or by
77 becoming a member of a group insurance pool. A group of employers may enter into an
78 agreement to pool their liabilities under this subsection. If such group is joined, individual
79 members shall not be required to qualify as individual self-insurers. Such group shall comply
80 with section 287.223. In order for an employer to make such an election, the employer shall
81 provide the department with notice of such an election in a manner established by the
82 department. The provisions of this paragraph shall expire on December 31, 2038; or

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

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

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

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

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

287.470. 1. Upon its own motion or upon the application of any party in interest on
2 the ground of a change in condition, the commission may at any time upon a rehearing after
3 due notice to the parties interested review any award and on such review may make an award
4 ending, diminishing or increasing the compensation previously awarded, subject to the
5 maximum or minimum provided in this chapter, and shall immediately send to the parties and
6 the employer's insurer a copy of the award. No such review shall affect such award as regards
7 any moneys paid.

8 **2. Upon the filing of a written agreement signed by the claimant and his or her**
9 **attorney, the commission shall change the name, information, or fee arrangement of the**
10 **attorney or law firm associated with the claimant's case.**

287.610. 1. After August 28, 2005, the division may appoint additional
2 administrative law judges for a maximum of forty authorized administrative law judges.
3 Appropriations shall be based upon necessity, measured by the requirements and needs of
4 each division office. Administrative law judges shall be duly licensed lawyers under the laws
5 of this state. Administrative law judges shall not practice law or do law business and shall
6 devote their whole time to the duties of their office. The director of the division of workers'
7 compensation shall publish and maintain on the division's website the appointment dates or
8 initial dates of service for all administrative law judges.

9 ~~2. [The thirteen administrative law judges with the most years of service shall be~~
10 ~~subject to a retention vote on August 28, 2008. The next thirteen administrative law judges~~
11 ~~with the most years of service in descending order shall be subject to a retention vote on~~
12 ~~August 28, 2012. Administrative law judges appointed and not previously referenced in this~~

13 ~~subsection shall be subject to a retention vote on August 28, 2016. Subsequent retention~~
14 ~~votes shall be held every twelve years. Any administrative law judge who has received two~~
15 ~~or more votes of no confidence under performance audits by the committee shall not receive a~~
16 ~~vote of retention.~~

17 ~~3. The administrative law judge review committee members shall not have any direct~~
18 ~~or indirect employment or financial connection with a workers' compensation insurance~~
19 ~~company, claims adjustment company, health care provider nor be a practicing workers'~~
20 ~~compensation attorney. All members of the committee shall have a working knowledge of~~
21 ~~workers' compensation.~~

22 ~~4. The committee shall within thirty days of completing each performance audit make~~
23 ~~a recommendation of confidence or no confidence for each administrative law judge.~~

24 ~~5.]~~ The administrative law judges appointed by the division shall only have
25 jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction
26 upon any review hearing, either in the way of an appeal from an original hearing or by way of
27 reopening any prior award, except to correct a clerical error in an award or settlement if the
28 correction is made by the administrative law judge within twenty days of the original award
29 or settlement. The labor and industrial relations commission may remand any decision of an
30 administrative law judge for a more complete finding of facts. The commission may also
31 correct a clerical error in awards or settlements within thirty days of its final award. With
32 respect to original hearings, the administrative law judges shall have such jurisdiction and
33 powers as are vested in the division of workers' compensation under other sections of this
34 chapter, and wherever in this chapter the word "commission", "commissioners" or "division"
35 is used in respect to any original hearing, those terms shall mean the administrative law
36 judges appointed under this section. When a hearing is necessary upon any claim, the
37 division shall assign an administrative law judge to such hearing. Any administrative law
38 judge shall have power to approve contracts of settlement, as provided by section 287.390,
39 between the parties to any compensation claim or dispute under this chapter pending before
40 the division of workers' compensation. Any award by an administrative law judge upon an
41 original hearing shall have the same force and effect, shall be enforceable in the same manner
42 as provided elsewhere in this chapter for awards by the labor and industrial relations
43 commission, and shall be subject to review as provided by section 287.480.

44 ~~[6.]~~ 3. Any of the administrative law judges employed pursuant to this section may be
45 assigned on a temporary basis to the branch offices as necessary in order to ensure the proper
46 administration of this chapter.

47 ~~[7.]~~ 4. All administrative law judges shall be required to participate in, on a
48 continuing basis, specific training that shall pertain to those elements of knowledge and
49 procedure necessary for the efficient and competent performance of the administrative law

50 judges' required duties and responsibilities. Such training requirements shall be established
51 by the division subject to appropriations and shall include training in medical determinations
52 and records, mediation and legal issues pertaining to workers' compensation adjudication.
53 Such training may be credited toward any continuing legal education requirements.

54 ~~[8. (1) The administrative law judge review committee shall conduct a performance~~
55 ~~audit of all administrative law judges every two years. The audit results, stating the~~
56 ~~committee's recommendation of confidence or no confidence of each administrative law~~
57 ~~judge shall be sent to the governor no later than the first week of each legislative session~~
58 ~~immediately following such audit. Any administrative law judge who has received three or~~
59 ~~more votes of no confidence under two successive performance audits by the committee may~~
60 ~~have their appointment immediately withdrawn.~~

61 ~~(2) The review committee shall consist of one member appointed by the president pro~~
62 ~~tem of the senate, one member appointed by the minority leader of the senate, one member~~
63 ~~appointed by the speaker of the house of representatives, and one member appointed by the~~
64 ~~minority leader of the house of representatives. The governor shall appoint to the committee~~
65 ~~one member selected from the commission on retirement, removal, and discipline of judges.~~
66 ~~This member shall act as a member ex officio and shall not have a vote in the committee. The~~
67 ~~committee shall annually elect a chairperson from its members for a term of one year. The~~
68 ~~term of service for all members shall be two years. The review committee members shall all~~
69 ~~serve without compensation. Necessary expenses for review committee members and all~~
70 ~~necessary support services to the review committee shall be provided by the division.]~~

71 **5. The director of the division may file a complaint with the administrative**
72 **hearing commission, as provided under chapter 621, seeking to remove an**
73 **administrative law judge from office if the administrative law judge:**

74 **(1) Has committed any felony, as defined in subdivision (26) of section 556.061,**
75 **or misdemeanor, as defined in subdivision (33) of section 556.061, regardless of whether**
76 **a criminal charge has been filed;**

77 **(2) Has been convicted or has entered a plea of guilty or nolo contendere in a**
78 **criminal prosecution under the laws of any state, the United States, or of any country,**
79 **regardless of whether sentence is imposed;**

80 **(3) Is guilty of misconduct, habitual intoxication, willful neglect of duty,**
81 **corruption in office, or incompetency; or**

82 **(4) Has committed any act that involves moral turpitude or oppression in office.**

83 **6. (1) Prior to the filing of the complaint, the director shall notify the**
84 **administrative law judge in writing of the reasons for the complaint.**

85 **(2) If the reason for the complaint is willful neglect of duty or incompetency, the**
86 **administrative law judge shall have ninety days from the date the complaint was made**

87 to remedy the complained of behavior. If such complained of behavior has not been
88 remedied after ninety days, the director may file the complaint with the administrative
89 hearing commission as provided by chapter 621.

90 7. After the director has filed a complaint with the administrative hearing
91 commission, the proceedings shall be conducted in accordance with the provisions of
92 chapter 621. Upon a finding by the administrative hearing commission that:

93 (1) The grounds, provided in subsection 5 of this section, for disciplinary action
94 are met, the director may, singly or in combination, issue the following disciplinary
95 actions against the administrative law judge: removal from office, suspension from the
96 performance of duties for a period of time, or other discipline as determined by the
97 director. The director shall make a record of written findings of fact and conclusions of
98 law with respect to the issues and shall put a copy of such record in the administrative
99 law judge's permanent file; or

100 (2) There are no grounds for disciplinary action, the administrative law judge
101 shall immediately resume duties and shall receive any attorney's fees due under section
102 536.087.

103 8. Notwithstanding any provision of this section to the contrary, the following
104 events or acts by an administrative law judge are deemed to be an immediate threat to
105 the administration of the provisions of chapter 287 and shall be considered cause for
106 suspension with pay of the administrative law judge without notice, at the discretion of
107 the director:

108 (1) A crime for which the administrative law judge is being held without bond
109 for a period of more than fourteen days;

110 (2) Suspension or revocation of a license to practice law; or

111 (3) A declaration of incapacity by a court of competent jurisdiction.

112 9. No rule or portion of a rule promulgated pursuant to the authority of this section
113 shall become effective unless it has been promulgated pursuant to the provisions of chapter
114 536.

287.615. 1. The division may appoint or employ such persons as may be necessary to
2 the proper administration of this chapter. All salaries to clerical employees shall be fixed by
3 the division and approved by the labor and industrial relations commission. Beginning
4 January 1, 2006, the annual salary of each administrative law judge[;] and administrative law
5 judge in charge[; and chief legal counsel] shall be as follows:

6 (1) ~~[For any chief legal counsel located at the division office in Jefferson City,~~
7 ~~Missouri, compensation at two thousand dollars above eighty percent of the rate at which an~~
8 ~~associate circuit judge is compensated;~~

9 (2)] For each administrative law judge, compensation at ninety percent of the rate at
10 which an associate division circuit judge is compensated;

11 ~~[(3)]~~ (2) For each administrative law judge in charge, compensation at the same rate
12 as an administrative law judge plus five thousand dollars.

13 **2. Administrative law judges' and chief administrative law judges' compensation**
14 **shall be determined solely by the rate outlined in this section and shall not increase when**
15 **pay raises for executive employees are appropriated.**

16 ~~[2-]~~ 3. The salary of the director of the division of workers' compensation shall be set
17 by the director of the department of labor and industrial relations, but shall not be less than the
18 salary plus two thousand dollars of an administrative law judge in charge. The appointees in
19 each classification shall be selected as nearly as practicable in equal numbers from each of the
20 two political parties casting the highest and the next highest number of votes for governor in
21 the last preceding state election.

287.812. As used in sections 287.812 to 287.855, unless the context clearly requires
2 otherwise, the following terms shall mean:

3 (1) "Administrative law judge", any person appointed pursuant to section 287.610 or
4 section 621.015, or any person who hereafter may have by law all of the powers now vested
5 by law in administrative law judges appointed under the provisions of the workers'
6 compensation law;

7 (2) "Beneficiary", a surviving spouse married to the deceased administrative law
8 judge or legal advisor of the division of workers' compensation continuously for a period of at
9 least two years immediately preceding the administrative law judge's or legal advisor's death
10 and also on the day of the last termination of such person's employment as an administrative
11 law judge or legal advisor for the division of workers' compensation, or if there is no
12 surviving spouse eligible to receive benefits, any minor child of the deceased administrative
13 law judge or legal advisor, or any child of the deceased administrative law judge or legal
14 advisor who, regardless of age, is unable to support himself because of intellectual disability,
15 disease or disability, or any physical handicap or disability, who shall share in the benefits on
16 an equal basis with all other beneficiaries;

17 (3) "Benefit", a series of equal monthly payments payable during the life of an
18 administrative law judge or legal advisor of the division of workers' compensation retiring
19 pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as
20 provided in sections 287.812 to 287.850;

21 (4) "Board", the board of trustees of the Missouri state employees' retirement system;

22 (5) ~~["Chief legal counsel", any person appointed or employed under section 287.615~~
23 ~~to serve in the capacity of legal counsel to the division;~~

24 ~~(6)]~~ "Division", the division of workers' compensation of the state of Missouri;

25 ~~[(7)]~~ (6) "Legal advisor", any person appointed or employed pursuant to section
26 287.600~~]; or 287.615[; or 287.616]~~ to serve in the capacity as a legal advisor or an associate
27 administrative law judge and any person appointed pursuant to section 286.010 or pursuant to
28 section 295.030, and any attorney or legal counsel appointed or employed pursuant to section
29 286.070;

30 ~~[(8)]~~ (7) "Salary", the total annual compensation paid for personal services as an
31 administrative law judge or legal advisor, or both, of the division of workers' compensation
32 by the state or any of its political subdivisions.

287.835. ~~[1. No benefits provided pursuant to sections 287.812 to 287.855 shall be
2 paid to any person who has been removed from office by impeachment or for misconduct, nor
3 to any person who has been disbarred from the practice of law, nor to the beneficiary of any
4 such persons.~~

5 2.] The board of trustees of the Missouri state employees' retirement system shall
6 cease paying benefits to any beneficiary of an administrative law judge or legal advisor who
7 is charged with the intentional killing of the administrative law judge or legal advisor without
8 legal excuse or justification. A beneficiary who is convicted of such charges shall no longer
9 be entitled to receive benefits. If the beneficiary is not convicted of such charge, the board
10 shall resume payment of benefits and shall pay the beneficiary any benefits that were
11 suspended pending resolution of such charge.

621.045. 1. The administrative hearing commission shall conduct hearings and make
2 findings of fact and conclusions of law in those cases when, under the law, a license issued by
3 any of the following agencies may be revoked or suspended or when the licensee may be
4 placed on probation or when an agency refuses to permit an applicant to be examined upon
5 his or her qualifications or refuses to issue or renew a license of an applicant who has passed
6 an examination for licensure or who possesses the qualifications for licensure without
7 examination:

8 Missouri State Board of Accountancy
9 Missouri State Board for Architects, Professional Engineers, Professional Land
10 Surveyors and Landscape Architects
11 Board of Barber Examiners
12 Board of Cosmetology
13 Board of Chiropody and Podiatry
14 Board of Chiropractic Examiners
15 Missouri Dental Board
16 Board of Embalmers and Funeral Directors
17 Board of Registration for the Healing Arts
18 Board of Nursing

19 Board of Optometry
20 Board of Pharmacy
21 Missouri Real Estate Commission
22 Missouri Veterinary Medical Board
23 Supervisor of Liquor Control
24 Department of Health and Senior Services
25 Department of Commerce and Insurance
26 Department of Mental Health
27 Board of Private Investigator Examiners.

28 2. If in the future there are created by law any new or additional administrative
29 agencies which have the power to issue, revoke, suspend, or place on probation any license,
30 then those agencies are under the provisions of this law.

31 3. The administrative hearing commission is authorized to conduct hearings and make
32 findings of fact and conclusions of law in those cases brought by the Missouri state board for
33 architects, professional engineers, professional land surveyors and landscape architects
34 against unlicensed persons under section 327.076.

35 4. **The administrative hearing commission is authorized to conduct hearings and**
36 **make findings of fact and conclusions of law in those cases brought by the division of**
37 **workers' compensation of the department of labor and industrial relations against**
38 **administrative law judges under section 287.610.**

39 5. Notwithstanding any other provision of this section to the contrary, after August
40 28, 1995, in order to encourage settlement of disputes between any agency described in
41 subsection 1 or 2 of this section and its licensees, any such agency shall:

42 (1) Provide the licensee with a written description of the specific conduct for which
43 discipline is sought and a citation to the law and rules allegedly violated, together with copies
44 of any documents which are the basis thereof and the agency's initial settlement offer, or file a
45 contested case against the licensee;

46 (2) If no contested case has been filed against the licensee, allow the licensee at least
47 sixty days, from the date of mailing, to consider the agency's initial settlement offer and to
48 contact the agency to discuss the terms of such settlement offer;

49 (3) If no contested case has been filed against the licensee, advise the licensee that the
50 licensee may, either at the time the settlement agreement is signed by all parties, or within
51 fifteen days thereafter, submit the agreement to the administrative hearing commission for
52 determination that the facts agreed to by the parties to the settlement constitute grounds for
53 denying or disciplining the license of the licensee; and

54 (4) In any contact under this subsection by the agency or its counsel with a licensee
55 who is not represented by counsel, advise the licensee that the licensee has the right to consult
56 an attorney at the licensee's own expense.

57 ~~[5-]~~ 6. If the licensee desires review by the administrative hearing commission under
58 subdivision (3) of subsection ~~[4]~~ 5 of this section at any time prior to the settlement becoming
59 final, the licensee may rescind and withdraw from the settlement and any admissions of fact
60 or law in the agreement shall be deemed withdrawn and not admissible for any purposes
61 under the law against the licensee. Any settlement submitted to the administrative hearing
62 commission shall not be effective and final unless and until findings of fact and conclusions
63 of law are entered by the administrative hearing commission that the facts agreed to by the
64 parties to the settlement constitute grounds for denying or disciplining the license of the
65 licensee.

66 ~~[6-]~~ 7. When a holder of a license, registration, permit, or certificate of authority
67 issued by the division of professional registration or a board, commission, or committee of the
68 division of professional registration against whom an affirmative decision is sought has failed
69 to plead or otherwise respond in the contested case and adequate notice has been given under
70 sections 536.067 and 621.100 upon a properly pled writing filed to initiate the contested case
71 under this chapter or chapter 536, a default decision shall be entered against the licensee
72 without further proceedings. The default decision shall grant such relief as requested by the
73 division of professional registration, board, committee, commission, or office in the writing
74 initiating the contested case as allowed by law. Upon motion stating facts constituting a
75 meritorious defense and for good cause shown, a default decision may be set aside. The
76 motion shall be made within a reasonable time, not to exceed thirty days after entry of the
77 default decision. "Good cause" includes a mistake or conduct that is not intentionally or
78 recklessly designed to impede the administrative process.

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