

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 2855

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VOSS.

6402H.01P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 287.200, 287.470, 287.690, and 287.715, RSMo, and to enact in lieu thereof four 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Section A. Sections 287.200, 287.470, 287.690, and 287.715, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 287.200, 287.470,
3 287.690, and 287.715, to read as follows:

287.200. 1. Compensation for permanent total disability shall be paid during the
2 continuance of such disability from the date of maximum medical improvement for the
3 lifetime of the employee at the weekly rate of compensation in effect under this subsection on
4 the date of the injury for which compensation is being made. The word "employee" as used
5 in this section shall not include the injured worker's dependents, estate, or other persons to
6 whom compensation may be payable as provided in subsection 1 of section 287.020. The
7 amount of such compensation shall be computed as follows:

8 (1) For all injuries occurring on or after September 28, 1983, but before September
9 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds
10 percent of the injured employee's average weekly earnings during the year immediately
11 preceding the injury, as of the date of the injury; provided that the weekly compensation paid
12 under this subdivision shall not exceed an amount equal to seventy percent of the state
13 average weekly wage, as such wage is determined by the division of employment security, as
14 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. In any case where the life payment is suspended under this subsection, the
48 commission may at reasonable times review the case and either the employee or the employer
49 may request an informal conference with the commission relative to the resumption of the
50 employee's weekly life payment in the case.

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

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

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

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

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

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

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

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

83 (5) Notwithstanding any other provision of this chapter to the contrary, should the
84 employee die before the additional benefits provided for in subdivision (2) and paragraph (a)
85 of subdivision (3) of this subsection are paid, the additional benefits are payable to the
86 employee's spouse or children, natural or adopted, legitimate or illegitimate, in addition to
87 benefits provided under section 287.240. If there is no surviving spouse or children and the

88 employee has received less than the additional benefits provided for in subdivision (2) and
89 paragraph (a) of subdivision (3) of this subsection the remainder of such additional benefits
90 shall be paid as a single payment to the estate of the employee;

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

94 5. Any employee who obtains benefits under subdivision (2) of subsection 4 of this
95 section for acquiring asbestosis who later obtains an award for mesothelioma shall not receive
96 more benefits than such employee would receive having only obtained benefits for
97 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 and the new attorney, the commission shall change the name, information, or**
10 **fee arrangement of the attorney or law firm associated with the claimant's case.**

287.690. Prior to December 31, 1993, for the purpose of providing for the expense of
2 administering this chapter, every person, partnership, association, corporation, whether
3 organized under the laws of this or any other state or country, the state of Missouri, including
4 any of its departments, divisions, agencies, commissions, and boards or any political
5 subdivisions of the state who self-insure or hold themselves out to be any part self-insured,
6 company, mutual company, the parties to any interindemnity contract, or other plan or
7 scheme, and every other insurance carrier, insuring employers in this state against liability for
8 personal injuries to their employees, or for death caused thereby, under this chapter, shall pay,
9 as provided in this chapter, tax upon the net deposits, net premiums or net assessments
10 received, whether in cash or notes in this state, or on account of business done in this state, for
11 such insurance in this state at the rate of two percent in lieu of all other taxes on such net
12 deposits, net premiums or net assessments, which amount of taxes shall be assessed and
13 collected as herein provided. Beginning October 31, 1993, and every year thereafter, the
14 director of the division of workers' compensation shall estimate the amount of revenue
15 required to administer this chapter and the director shall determine the rate of tax to be paid in
16 the following calendar year pursuant to this section commencing with the calendar year
17 beginning on January 1, 1994. If the balance of the fund estimated to be on hand on

18 December thirty-first of the year each tax rate determination is made is less than one hundred
19 ten percent of the previous year's expenses plus any additional revenue required due to new
20 statutory requirements given to the division by the general assembly, then the director shall
21 impose a tax not to exceed two percent in lieu of all other taxes on net deposits, net premiums
22 or net assessments, rounded up to the nearest ~~one-half~~ **one-tenth** of a percentage point,
23 which amount of taxes shall be assessed and collected as herein provided. The net premium
24 equivalent for individual self-insured employers shall be based on average rate classifications
25 calculated by the department of commerce and insurance as taken from premium rates filed
26 by the twenty insurance companies providing the greatest volume of workers' compensation
27 insurance coverage in this state. For employers qualified to self-insure their liability pursuant
28 to this chapter, the rates filed by such group of employers in accordance with subsection 4 of
29 section 287.280 shall be the net premium equivalent. Any group of political subdivisions of
30 this state qualified to self-insure their liability pursuant to this chapter as authorized by
31 section 537.620 may choose either the average rate classification method or the filed rate
32 method, provided that the method used may only be changed once without receiving the
33 consent of the director of the division of workers' compensation. Every entity required to pay
34 the tax imposed pursuant to this section and section 287.730 shall be notified by the division
35 of workers' compensation within ten calendar days of the date of the determination of the rate
36 of tax to be imposed for the following year. Net premiums, net deposits or net assessments
37 are defined as gross premiums, gross deposits or gross assessments less cancelled or returned
38 premiums, premium deposits or assessments and less dividends or savings, actually paid or
39 credited.

287.715. 1. For the purpose of providing for revenue for the second injury fund,
2 every authorized self-insurer, and every workers' compensation policyholder insured pursuant
3 to the provisions of this chapter, shall be liable for payment of an annual surcharge in
4 accordance with the provisions of this section. The annual surcharge imposed under this
5 section shall apply to all workers' compensation insurance policies and self-insurance
6 coverages which are written or renewed on or after April 26, 1988, including the state of
7 Missouri, including any of its departments, divisions, agencies, commissions, and boards or
8 any political subdivisions of the state who self-insure or hold themselves out to be any part
9 self-insured. Notwithstanding any law to the contrary, the surcharge imposed pursuant to this
10 section shall not apply to any reinsurance or retrocessional transaction.

11 2. Beginning October 31, 2005, and each year thereafter, the director of the division
12 of workers' compensation shall estimate the amount of benefits payable from the second
13 injury fund during the following calendar year and shall calculate the total amount of the
14 annual surcharge to be imposed during the following calendar year upon all workers'
15 compensation policyholders and authorized self-insurers. The amount of the annual

16 surcharge percentage to be imposed upon each policyholder and self-insured for the following
17 calendar year commencing with the calendar year beginning on January 1, 2006, shall be set
18 at and calculated against a percentage, not to exceed three percent, of the policyholder's or
19 self-insured's workers' compensation net deposits, net premiums, or net assessments for the
20 previous policy year, rounded up to the nearest ~~one-half~~ **one-tenth** of a percentage point,
21 that shall generate, as nearly as possible, one hundred ten percent of the moneys to be paid
22 from the second injury fund in the following calendar year, less any moneys contained in the
23 fund at the end of the previous calendar year. All policyholders and self-insurers shall be
24 notified by the division of workers' compensation within ten calendar days of the
25 determination of the surcharge percent to be imposed for, and paid in, the following
26 calendar year. The net premium equivalent for individual self-insured employers shall be
27 based on average rate classifications calculated by the department of commerce and insurance
28 as taken from premium rates filed by the twenty insurance companies providing the greatest
29 volume of workers' compensation insurance coverage in this state. For employers qualified to
30 self-insure their liability pursuant to this chapter, the rates filed by such group of employers in
31 accordance with subsection 4 of section 287.280 shall be the net premium equivalent. Any
32 group of political subdivisions of this state qualified to self-insure their liability pursuant to
33 this chapter as authorized by section 537.620 may choose either the average rate classification
34 method or the filed rate method, provided that the method used may only be changed once
35 without receiving the consent of the director of the division of workers' compensation. The
36 director may advance funds from the workers' compensation fund to the second injury fund if
37 surcharge collections prove to be insufficient. Any funds advanced from the workers'
38 compensation fund to the second injury fund must be reimbursed by the second injury fund no
39 later than December thirty-first of the year following the advance. The surcharge shall be
40 collected from policyholders by each insurer at the same time and in the same manner that the
41 premium is collected, but no insurer or its agent shall be entitled to any portion of the
42 surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes,
43 licenses or fees.

44 3. All surcharge amounts imposed by this section shall be deposited to the credit of
45 the second injury fund.

46 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
47 insurers shall pay the amounts not later than the thirtieth day of the month following the end
48 of the quarter in which the amount is received from policyholders. If the director of the
49 division of workers' compensation fails to calculate the surcharge by the thirty-first day of
50 October of any year for the following year, any increase in the surcharge ultimately set by the
51 director shall not be effective for any calendar quarter beginning less than sixty days from the
52 date the director makes such determination.

53 5. If a policyholder or self-insured fails to make payment of the surcharge or an
54 insurer fails to make timely transfer to the division of surcharges actually collected from
55 policyholders, as required by this section, a penalty of one-half of one percent of the
56 surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-
57 insured or insurer. Penalties assessed under this subsection shall be collected in a civil action
58 by a summary proceeding brought by the director of the division of workers' compensation.

59 6. Notwithstanding subsection 2 of this section to the contrary, the director of the
60 division of workers' compensation shall collect a supplemental surcharge not to exceed one
61 percent for calendar years 2014 to 2026 of the policyholder's or self-insured's workers'
62 compensation net deposits, net premiums, or net assessments for the previous policy year,
63 rounded up to the nearest one-quarter of a percentage point. All policyholders and self-
64 insurers shall be notified by the division of the supplemental surcharge percentage to be
65 imposed for such period of time as part of the notice provided in subsection 2 of this section.
66 The provisions of this subsection shall expire on December 31, 2026.

67 7. Funds collected under the provisions of this chapter shall be the sole funding
68 source of the second injury fund.

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