FIRST REGULAR SESSION

SENATE BILL NO. 580

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 27, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1512S.01I

AN ACT

To repeal sections 287.020, 287.067, 287.120, 287.655 and 287.800, RSMo 2000, relating to workers' compensation, and to enact in lieu thereof five new sections relating to the same subject.

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

Section A. Sections 287.020, 287.067, 287.120, 287.655 and 287.800, RSMo 2000, are repealed and five new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, 287.120, 287.655 and 287.800, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the motor carrier and railroad safety division of the department of economic development or by the interstate commerce commission.

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was **[**a**] the dominant** substantial factor in the cause of the resulting medical condition or disability. **This chapter shall not apply to personal health conditions of an employee which manifest themselves in the employment in which the work was not the substantial dominant factor in the resulting need for medical treatment or treatment.** An injury**, including injuries resulting directly or indirectly from idiopathic causes,** is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. **An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of** ordinary, gradual deterioration or progressive degeneration of the body caused by aging **[**shall not be compensable, except where the deterioration or degeneration follows as an incident of employment**] or by the normal activities of day to day living**.

(2) **The employee shall not be entitled to recover for the aggravation of a pre-existing condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of permanent partial disability determined to be pre-existing. If a compensable injury combines with a pre-existing disease or condition to cause or prolong disability or need for treatment, the resultant condition is compensable only to the extent that the compensable injury is and remains the substantial dominant cause of the disability or need for treatment. If the substantial cause of a worsened condition is an injury not arising out of and in the course of employment, including injuries from idiopathic causes, the worsening is not compensable.**

(3) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

[(3)**]** **(4)** The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure

of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.

6. A person who is employed by the same employer for more than five and one-half consecutive work days shall for the purpose of this chapter be considered an "employee".

7. The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

8. As used in this chapter and all acts amendatory thereof, the term "commission" shall hereafter be construed as meaning and referring exclusively to the labor and industrial relations commission of Missouri, and the term "director" shall hereafter be construed as meaning the director of the department of insurance of the state of Missouri or such agency of government as shall exercise the powers and duties now conferred and imposed upon the department of insurance of the state of Missouri.

9. The term "division" as used in this chapter means the division of workers' compensation of the department of labor and industrial relations of the state of Missouri.

10. For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section 287.250 shall control.

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a

rational consequence.

2. An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

3. "Loss of hearing due to industrial noise" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of producing occupational deafness.

4. "Radiation disability" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances or to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the use of or direct contact with radium or radioactive properties or substances or the use of or direct exposure to Roentgen rays (X rays) or ionizing radiation.

5. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

6. Any employee who is exposed to and contracts any contagious or communicable disease arising out of and in the course of his or her employment shall be eligible for benefits under this chapter as an occupational disease.

7. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

8. All evidence on issues raised pursuant to subsection 7 of this section shall be tried in one hearing in which the division shall have exclusive jurisdiction of the parties and the subject matter. In such hearing, any employer, whether it was the last employer or a prior employer, may join the case for the purpose of determining whether or not there was a repetitive motion exposure which was the dominant substantial contributing factor to the injury during the employment of such employee. Upon a hearing, the administrative law judge, or the parties, as they may otherwise agree, shall determine which of the employers was the last employer in which there was an occupational disease which was the dominant substantial contributing factor to the injury the employee sustained and, in the event of a voluntary payment, shall order

reimbursement by such employer or its insurer.

9. The employee shall cooperate in all phases of such hearing, giving testimony as is necessary to determine the issues. Should the employee fail to cooperate in being willing to testify to the essential facts, the administrative law judge shall suspend all rights to benefits under this chapter unless and until the employee so cooperates. If the employee fails to cooperate within a period of six months after being so ordered to do so by the administrative law judge, employee's case shall be automatically dismissed with prejudice as to any rights pursuant to this chapter.

10. An employer who has paid benefits to the employee can sue the employee pursuant to any civil remedy available upon the property, both real and personal, of the employee, to satisfy any payments made by said employer to said employee under such circumstances, notwithstanding the provisions of subsection 1 of section 287.260.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of his employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

3. No compensation shall be allowed under this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

4. Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.

5. Where the injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, which rule has been kept posted in a conspicuous place on the employer's premises, the compensation and death benefit provided for herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a diligent effort to cause his employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to the use of alcohol or nonprescribed controlled drugs in the workplace, which rule or policy has been kept posted in a conspicuous place on the employer's premises, the compensation and death benefit provided for herein shall be reduced fifteen percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs; provided, that it is shown that the employee had actual knowledge of the rules or policy so adopted by the employer and, provided further that the employer had, prior to the injury, made a diligent effort to inform the employee of the requirement to obey any reasonable rule or policy adopted by the employer.

(2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy which is posted and publicized as set forth in subdivision (1) is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited. **Where an injured employee's blood alcohol content is sufficient under prevailing Missouri state law to constitute being "legally drunk", there shall be a conclusive presumption that the use of alcohol under such circumstance was the proximate cause of the injury.** The forfeiture of benefits or compensation shall not apply when:

(a) The employer has actual knowledge of the employee's use of the alcohol or nonprescribed controlled drugs and in the face thereof fails to take any recuperative or disciplinary action; or

(b) As part of the employee's employment, he is authorized by the employer to use such alcohol or nonprescribed controlled drugs.

7. Where the employee's participation in a voluntary recreational activity or program is the proximate cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:

(a) The employee was directly ordered by the employer to participate in such recreational activity or program;

(b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or

(c) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

8. Mental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual

events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.655. **1. Any claim for compensation before the division may be dismissed by the administrative law judge without a hearing upon the filing of a written request for dismissal by an employee or by an employee and his attorney, if represented.**

2. Any claim before the division may be dismissed for failure to prosecute in accordance with rules and regulations promulgated by the commission, except such notice need not be by certified or registered mail if the person or entity to whom notice is directed is represented by counsel and counsel is also given such notice at counsel's last known address. To dismiss a claim the administrative law judge shall enter an order of dismissal which shall be deemed an award and subject to review and appeal in the same manner as provided for other awards in this chapter.

3. On or after August 28, 2001, subject to the provisions in subsections 1 and 2 of this section, any claim for compensation filed with the division pursuant to this chapter for which no hearing has been conducted for a period of three years after the date of acknowledgment of the claim for compensation by the division shall be automatically dismissed with prejudice to any further rights of the employee after the division sends a notice of a hearing date to a claimant and the employee fails to appear or contact the division before or on such date. Notice must be sent by certified mail. In the event the employee can demonstrate that he is under the active medical care of a qualified physician on a regular basis within six months before the expiration of the three-year period, the three year period shall not apply, but shall be extended for a period of three years from the last date of such medical care as the administrative law judge deems appropriate, provided the employee is under medical care and there is a good and valid reason for keeping such case open. At such time as no valid reason continues to exist, the case shall be automatically dismissed with prejudice by the division after the division notifies the claimant of the hearing date by certified mail and the employee fails to appear or contact the division before or on such date. The written order of the administrative law judge shall set forth in detail the nature and character of the history of the case and the reason for the dismissal.

4. Where any employee fails to keep the second regularly scheduled medical appointment for treatment or evaluation purposes, the employee, upon having at least two weeks prior notice thereof, shall upon failure to keep such appointment, reimburse the physician an appropriate amount for the physician's time in scheduling the

appointment at his reasonable charges for same. This charge may be assessed against the employee with respect to any such appointment. If the employer or its insurer pays a physician a reasonable amount for such appointment not kept, such employer or its insurer shall be directly reimbursed, in lieu of said lien, out of the settlement proceeds, or any award of compensation.

287.800. All of the provisions of this chapter shall be **impartially and not** liberally construed with a view to the public welfare**[**, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto**]**. **The facts in workers' compensation cases are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. It is the specific intent of the general assembly that workers' compensation cases shall be decided on the merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases.**