

SECOND REGULAR SESSION

SENATE BILL NO. 825

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Pre-filed December 13, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3394S.011

AN ACT

To repeal sections 287.020, 287.370, 287.410, 287.470, 287.480, 287.490, 287.495, 287.500 and 287.615, RSMo, relating to administrative law, and to enact in lieu thereof seven new sections relating to the same subject, with an effective date for a certain section.

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

Section A. Sections 287.020, 287.370, 287.410, 287.470, 287.480, 287.490, 287.495, 287.500 and 287.615, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.020, 287.370, 287.470, 287.480, 287.495, 287.500 and 287.615, to read as follows: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.

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

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly 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 substantial factor in the cause of the resulting medical condition or disability. An injury 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. 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.

(2) 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) 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,] **After August 28, 2002**, the term "commission" shall hereafter be construed as meaning and referring exclusively to the [labor and industrial relations commission of] **administrative law judges of the Missouri division of workers compensation**, 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.

287.370. Any employer or group of employers may enter into or continue any agreement with his or their employees to provide a system of compensation benefits or insurance in lieu of the compensation and insurance provided by this chapter. Such substitute system and insurance shall be subject to the approval of the director of the insurance division and shall not be approved by him unless they confer benefits upon injured employees or their dependents at least equivalent to the benefits provided by this chapter, nor if they require contributions from employees, unless they confer benefits in addition to those provided under this chapter at least commensurate with such contribution. Appeals shall lie to the [commission] **division** from any decision, award or order made by or under such substitute system. Such substitute system and insurance may be terminated by the director of the insurance division on reasonable notice and hearing to the interested parties, if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency or if for any other substantial reason it fails to accomplish the purposes of this chapter; and in this case the director of the insurance division shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to have such action reviewed by a court of competent jurisdiction.

[287.410. The division shall have and exercise such of the powers and functions of the commission in the administration of the workers' compensation law as the commission may by regulation prescribe; provided, however, that the power and duty to

review any award made under the workers' compensation law, as authorized by sections 287.470 and 287.480, may not be delegated, but such power and duty shall be exercised exclusively by the commission; and provided further, that the commission shall exercise no authority with respect to the selection or tenure of office of any individual appointed or employed by the division in the administration of the workers' compensation law.]

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

287.480. [1. If an application for review is made to the commission within twenty days from the date of the award, the full commission, if the first hearing was not held before the full commission, shall review the evidence, or, if considered advisable, as soon as practicable hear the parties at issue, their representatives and witnesses and shall make an award and file it in like manner as specified in section 287.470. Any notice of appeal, application or other paper required under this law to be filed with the division or the commission shall, when mailed to or transmitted by electronic facsimile meeting the requirements of the division and received by the division or the commission, be deemed to be filed as of the date endorsed by the United States post office on the envelope or container in which such paper is received, or the date received if filed by facsimile. In instances where the last day for the filing of any such paper falls on a Sunday or legal holiday, the filing shall be deemed timely if accomplished on the next day subsequent which is neither a Sunday or a legal holiday. When filing by electronic facsimile meeting the requirements of the division, the parties shall, on the same date as the facsimile transmission, mail by the United States mail the original and the requisite number of copies to the commission.

2.] An employer who has been determined by the division to be an employer subject to and operating pursuant to this chapter and has also been determined to be uninsured may file an [application for review] **appeal pursuant to section 287.495** but such [application for review] **appeal** shall be accompanied with and attached to the [application for review] **appeal** a bond which shall be conditioned for the satisfaction of the award in full, and if for any reason the appeal is dismissed or if the award is affirmed or modified, to satisfy in full such modification of the award as the [commission] **court of appeals** may award. The surety on such bond shall be a bank, savings and loan institution or an insurance company licensed to do business in the state of Missouri. No appeal to the [commission] **court of appeals** shall be considered filed unless accompanied by such bond and such bond shall also be a prerequisite for appeal as

provided in section 287.495 and such appeal pursuant to section 287.495 shall not be considered filed unless accompanied by such bond. If any other employer pursuant to section 287.040 would be liable, the employee shall be paid benefits from the bond until the bond is exhausted before the section 287.040 employer is required to pay.

[287.490. 1. The final award of the commission shall be conclusive and binding unless either party to the dispute shall within thirty days from the date of the final award appeal to the circuit court of the county in which the accident occurred, or if the accident occurred outside of this state, then in the county where the contract of employment was made. Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Upon appeal no additional evidence shall be heard and in the absence of fraud, the findings of fact made by the commission within its powers shall be conclusive and binding. The court, on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant the making of the award.

2. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the commission, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The commission shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the commission filed as a part of the transcript on appeal shall be certified back to the commission by the appellate court. In all appeals from the commission or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit and appellate courts shall have precedence over all cases except election contests.

3. The provisions of this section shall only apply to disputes based on claims which arose prior to August 13, 1980. All disputes based on claims arising on or after August 13, 1980, shall be governed by the provisions of section 287.495.]

287.495. 1. The final award of the [commission] **division** shall be conclusive and binding unless either party to the dispute shall, within thirty days from the date of the final

award, appeal the award to the appellate court. The appellate court shall have jurisdiction to review all decisions of the [commission] **division** pursuant to this chapter where the division has original jurisdiction over the case. Venue as established by subsection 2 of section 287.640 shall determine the appellate court which hears the appeal. Such appeal may be taken by filing notice of appeal with the [commission] **division**, whereupon the [commission] **division** shall, under its certificate, return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Upon appeal no additional evidence shall be heard and, in the absence of fraud, the findings of fact made by the [commission] **division** within its powers shall be conclusive and binding. The court, on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant the making of the award.

2. The provisions of this section shall apply to all disputes based on claims arising on or after August 13, 1980.

287.500. Any party in interest may file in the circuit court of the county in which the accident occurred, a certified copy of a memorandum of agreement approved by the division [or by the commission] or of an order or decision of the division [or the commission], or of an award of the division [or of the commission] from which an application for review or from which an appeal has not been taken, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment were a final judgment which had been rendered in a suit duly heard and determined by said court. Any such judgment of said circuit court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court, whenever modified on account of a changed condition under section 287.470, shall be modified to conform to any decision of the [commission] **division**, ending, diminishing or increasing any weekly payment under the provisions of section 287.470 upon the presentation to it of a certified copy of such decision.

287.615. 1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. The annual salary of each legal advisor, administrative law judge, administrative law judge in charge, and chief legal advisor shall be as follows:

- (1) For each legal advisor, compensation at eighty percent of the rate at which an

associate division circuit judge is compensated;

(2) For each chief legal advisor, compensation at the same rate as a legal advisor plus two thousand dollars;

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

(4) For each administrative law judge in charge, compensation at the same rate as an administrative law judge plus five thousand dollars.

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

3. This section shall apply to each division office that employs more than one administrative law judge.

4. The office shall be headed by a chief administrative law judge selected by a majority of the administrative law judges from their number to serve a term of two years, who may be removed only for cause and shall continue in office until a successor is appointed.

5. The chief administrative law judge shall:

(1) Supervise the administrative law judges in the office or group;

(2) Assign administrative law judges in any case referred to the office or group;

(3) Protect and ensure the decisional independence of each administrative law judge;

(4) Establish and implement standards and specialized training programs and provide materials for administrative law judges;

(5) Provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties.

6. The enactment of this section shall become effective January 1, 2003.