

SECOND REGULAR SESSION

SENATE BILL NO. 1074

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 20, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5264S.011

AN ACT

To repeal sections 287.127, 287.250, 287.390, and 287.800, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation, with penalty provisions.

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

Section A. Sections 287.127, 287.250, 287.390, and 287.800, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.127, 287.250, 287.390, and 287.800, to read as follows:

287.127. 1. Beginning January 1, 1993, all employers shall post a notice
2 at their place of employment, in a sufficient number of places on the premises to
3 assure that such notice will reasonably be seen by all employees. An employer
4 for whom services are performed by individuals who may not reasonably be
5 expected to see a posted notice shall notify each such employee in writing of the
6 contents of such notice. The notice shall include:

7 (1) That the employer is operating under and subject to the provisions of
8 the Missouri workers' compensation law;

9 (2) That employees must report all injuries immediately to the employer
10 by advising the employer personally, the employer's designated individual or the
11 employee's immediate boss, supervisor or foreman and that the employee may lose
12 the right to receive compensation if the injury or illness is not reported within
13 thirty days or in the case of occupational illness or disease, within thirty days [of
14 the time he or she is reasonably aware of work relatedness of the injury or
15 illness;] **after the diagnosis of the condition.** Employees who fail to notify
16 their employer within thirty days may jeopardize their ability to receive
17 compensation, and any other benefits under this chapter;

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

18 (3) The name, address and telephone number of the insurer, if insured. If
19 self-insured, the name, address and telephone number of the employer's
20 designated individual responsible for reporting injuries or the name, address and
21 telephone number of the adjusting company or service company designated by the
22 employer to handle workers' compensation matters;

23 (4) The name, address and the toll-free telephone number of the division
24 of workers' compensation;

25 (5) That the employer will supply, upon request, additional information
26 provided by the division of workers' compensation;

27 (6) That a fraudulent action by the employer, employee or any other
28 person is unlawful.

29 2. The division of workers' compensation shall develop the notice to be
30 posted and shall distribute such notice free of charge to employers and insurers
31 upon request. Failure to request such notice does not relieve the employer of its
32 obligation to post the notice. If the employer carries workers' compensation
33 insurance, the carrier shall provide the notice to the insured within thirty days
34 of the insurance policy's inception date.

35 3. Any employer who willfully violates the provisions of this section shall
36 be guilty of a class A misdemeanor and shall be punished by a fine of not less
37 than fifty dollars nor more than one thousand dollars, or by imprisonment in the
38 county jail for not more than six months or by both such fine and imprisonment,
39 and each such violation or each day such violation continues shall be deemed a
40 separate offense.

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

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

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

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

10 (4) If the wages were fixed by the day, hour, or by the output of the
11 employee, the average weekly wage shall be computed by dividing by thirteen the
12 wages earned while actually employed by the employer in each of the last thirteen
13 calendar weeks immediately preceding the week in which the employee was
14 injured or if actually employed by the employer for less than thirteen weeks, by

15 the number of calendar weeks, or any portion of a week, during which the
16 employee was actually employed by the employer. For purposes of computing the
17 average weekly wage pursuant to this subdivision, absence of five regular or
18 scheduled work days, even if not in the same calendar week, shall be considered
19 as absence for a calendar week. If the employee commenced employment on a day
20 other than the beginning of a calendar week, such calendar week and the wages
21 earned during such week shall be excluded in computing the average weekly wage
22 pursuant to this subdivision;

23 (5) If the employee has been employed less than two calendar weeks
24 immediately preceding the injury, the employee's weekly wage shall be considered
25 to be equivalent to the average weekly wage prevailing in the same or similar
26 employment at the time of the injury, except if the employer has agreed to a
27 certain hourly wage, then the hourly wage agreed upon multiplied by the number
28 of weekly hours scheduled shall be the employee's average weekly wage;

29 (6) If the hourly wage has not been fixed or cannot be ascertained, or the
30 employee earned no wage, the wage for the purpose of calculating compensation
31 shall be taken to be the usual wage for similar services where such services are
32 rendered by paid employees of the employer or any other employer;

33 (7) In computing the average weekly wage pursuant to subdivisions (1) to
34 (6) of this subsection, an employee shall be considered to have been actually
35 employed for only those weeks in which labor is actually performed by the
36 employee for the employer and wages are actually paid by the employer as
37 compensation for such labor.

38 2. For purposes of this section, the term "gross wages" includes, in
39 addition to money payments for services rendered, the reasonable value of board,
40 rent, housing, lodging or similar advance received from the employer, except if
41 such benefits continue to be provided during the period of the disability, then the
42 value of such benefits shall not be considered in calculating the average weekly
43 wage of the employee. The term "wages", as used in this section, includes the
44 value of any gratuities received in the course of employment from persons other
45 than the employer to the extent that such gratuities are reported for income tax
46 purposes. "Wages", as used in this section, does not include fringe benefits such
47 as retirement, pension, health and welfare, life insurance, training, Social
48 Security or other employee or dependent benefit plan furnished by the employer
49 for the benefit of the employee. Any wages paid to helpers or any money paid by
50 the employer to the employee to cover any special expenses incurred by the
51 employee because of the nature of his employment shall not be included in wages.

52 3. If an employee is hired by the employer for less than the number of
53 hours per week needed to be classified as a full-time or regular employee, benefits
54 computed for purposes of this chapter for permanent partial disability, permanent
55 total disability and death benefits shall be based upon the average weekly wage
56 of a full-time or regular employee engaged by the employer to perform work of the
57 same or similar nature and at the number of hours per week required by the
58 employer to classify the employee as a full-time or regular employee, but such
59 computation shall not be based on less than thirty hours per week.

60 4. If pursuant to this section the average weekly wage cannot fairly and
61 justly be determined by the formulas provided in subsections 1 to 3 of this
62 section, the division or the commission may determine the average weekly wage
63 in such manner and by such method as, in the opinion of the division or the
64 commission, based upon the exceptional facts presented, fairly determine such
65 employee's average weekly wage.

66 5. In computing the compensation to be paid to an employee, who, before
67 the injury for which the employee claims compensation, was disabled and drawing
68 compensation under the provisions of this chapter, the compensation for each
69 subsequent injury shall be apportioned according to the proportion of incapacity
70 and disability caused by the respective injuries which the employee may have
71 suffered.

72 6. For purposes of establishing a rate of compensation applicable only to
73 permanent partial disability, permanent total disability and death benefits,
74 pursuant to this chapter, the average weekly wage for an employee who is under
75 the age of twenty-one years shall be adjusted to take into consideration the
76 increased earning power of such employee until she or he attains the age of
77 twenty-one years and the average weekly wage for an employee who is an
78 apprentice or a trainee, and whose earnings would reasonably be expected to
79 increase, shall be adjusted to reflect a level of expected increase, based upon
80 completion of apprenticeship or traineeship, provided that such adjustment of the
81 average weekly wage shall not consider expected increase for a period occurring
82 more than three years after the date of the injury.

83 7. In all cases in which it is found by the division or the commission that
84 the employer knowingly employed a minor in violation of the child labor laws of
85 this state, a fifty percent additional compensation shall be allowed.

86 8. For an employee with multiple employments, as to the employee's
87 entitlement to any temporary total or temporary partial disability benefits only
88 pursuant to subsection 9 of section 287.220, and for no other purposes, the

89 employee's total average weekly wage shall be equal to the sum of the total of the
90 average weekly wage computed separately for each employment pursuant to the
91 provisions of this section to which the employee is unable to return because of
92 this injury.

93 9. The parties, by agreement and with approval of an administrative law
94 judge[, legal advisor] or the commission, may enter into a compromise lump sum
95 settlement in either permanent total or permanent partial disability cases which
96 prorates the lump sum settlement over the life expectancy of the injured
97 worker. When such an agreement has been approved, neither the weekly
98 compensation rate paid throughout the case nor the maximum statutory weekly
99 rate applicable to the injury shall apply. No compensation rate shall exceed the
100 maximum statutory weekly rate as of the date of the injury. Instead, the
101 prorated rate set forth in the approved settlement documents shall control and
102 become the rate for that case. This section shall be retroactive in effect.

 287.390. 1. Parties to claims hereunder may enter into voluntary
2 agreements in settlement thereof, but no agreement by an employee or his or her
3 dependents to waive his or her rights under this chapter shall be valid, nor shall
4 any agreement of settlement or compromise of any dispute or claim for
5 compensation under this chapter be valid until approved by an administrative law
6 judge or the commission, nor shall an administrative law judge or the commission
7 approve any settlement which is not in accordance with the rights of the parties
8 as given in this chapter. No such agreement shall be valid unless made after
9 seven days from the date of the injury or death. An administrative law judge, or
10 the commission, shall approve a settlement agreement as valid and enforceable
11 as long as the settlement is not the result of undue influence or fraud, the
12 employee fully understands his or her rights and benefits, and voluntarily agrees
13 to accept the terms of the agreement.

14 2. A compromise settlement approved by an administrative law judge or
15 the commission during the employee's lifetime shall extinguish and bar all claims
16 for compensation for the employee's death if the settlement compromises a
17 dispute on any question or issue other than the extent of disability or the rate of
18 compensation.

19 3. Notwithstanding the provisions of section 287.190, an employee shall
20 be afforded the option of receiving a compromise settlement as a one-time lump
21 sum payment. A compromise settlement approved by an administrative law judge
22 or the commission shall indicate the manner of payment chosen by the employee.

23 4. A minor dependent, by parent or conservator, may compromise disputes

24 and may enter into a compromise settlement agreement, and upon approval by
25 an administrative law judge or the commission the settlement agreement shall
26 have the same force and effect as though the minor had been an adult. The
27 payment of compensation by the employer in accordance with the settlement
28 agreement shall discharge the employer from all further obligation.

29 5. [In any claim] Under this chapter where an offer of settlement is made
30 [in writing and filed with the division by the employer], an employee is entitled
31 to one hundred percent of the amount offered, provided such employee is not
32 represented by counsel at the time the offer is tendered. Where such offer of
33 settlement is not accepted and where additional proceedings occur with regard to
34 the employee's claim, [the employee is entitled to one hundred percent of the
35 amount initially offered.] legal counsel representing the employee shall receive
36 reasonable fees for services rendered.

37 6. [As used in this chapter, "amount in dispute" means the dollar amount
38 in excess of the dollar amount offered or paid by the employer.] An offer of
39 settlement **or payment of any benefits under this chapter** shall not be
40 construed as an admission of liability.

 287.800. 1. Administrative law judges, [associate administrative law
2 judges, legal advisors,] the labor and industrial relations commission, the division
3 of workers' compensation, and any reviewing courts shall construe the provisions
4 of this chapter strictly.

5 2. Administrative law judges, [associate administrative law judges, legal
6 advisors,] the labor and industrial relations commission, and the division of
7 workers' compensation shall weigh the evidence impartially without giving the
8 benefit of the doubt to any party when weighing evidence and resolving factual
9 conflicts.

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