

SECOND REGULAR SESSION

SENATE BILL NO. 1241

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time February 27, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5366S.021

AN ACT

To repeal sections 287.020, 287.200, 287.220, and 287.230, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation, with an emergency clause.

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

Section A. Sections 287.020, 287.200, 287.220, and 287.230, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.020, 287.200, 287.220, and 287.230, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be
2 construed to mean every person in the service of any employer, as defined in this
3 chapter, under any contract of hire, express or implied, oral or written, or under
4 any appointment or election, including executive officers of corporations. **Except**
5 **as otherwise provided in section 287.200**, any reference to any employee who
6 has been injured shall, when the employee is dead, also include his dependents,
7 and other persons to whom compensation may be payable. The word "employee"
8 shall also include all minors who work for an employer, whether or not such
9 minors are employed in violation of law, and all such minors are hereby made of
10 full age for all purposes under, in connection with, or arising out of this
11 chapter. The word "employee" shall not include an individual who is the owner,
12 as defined in subsection 43 of section 301.010, RSMo, and operator of a motor
13 vehicle which is leased or contracted with a driver to a for-hire motor carrier
14 operating within a commercial zone as defined in section 390.020 or 390.041,
15 RSMo, or operating under a certificate issued by the Missouri department of
16 transportation or by the United States Department of Transportation, or any of
17 its subagencies.

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

18 2. The word "accident" as used in this chapter shall mean an unexpected
19 traumatic event or unusual strain identifiable by time and place of occurrence
20 and producing at the time objective symptoms of an injury caused by a specific
21 event during a single work shift. An injury is not compensable because work was
22 a triggering or precipitating factor.

23 3. (1) In this chapter the term "injury" is hereby defined to be an injury
24 which has arisen out of and in the course of employment. An injury by accident
25 is compensable only if the accident was the prevailing factor in causing both the
26 resulting medical condition and disability. "The prevailing factor" is defined to
27 be the primary factor, in relation to any other factor, causing both the resulting
28 medical condition and disability.

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

31 (a) It is reasonably apparent, upon consideration of all the circumstances,
32 that the accident is the prevailing factor in causing the injury; and

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

36 (3) An injury resulting directly or indirectly from idiopathic causes is not
37 compensable.

38 (4) A cardiovascular, pulmonary, respiratory, or other disease, or
39 cerebrovascular accident or myocardial infarction suffered by a worker is an
40 injury only if the accident is the prevailing factor in causing the resulting medical
41 condition.

42 (5) The terms "injury" and "personal injuries" shall mean violence to the
43 physical structure of the body and to the personal property which is used to make
44 up the physical structure of the body, such as artificial dentures, artificial limbs,
45 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
46 to replace the physical structure and such disease or infection as naturally results
47 therefrom. These terms shall in no case except as specifically provided in this
48 chapter be construed to include occupational disease in any form, nor shall they
49 be construed to include any contagious or infectious disease contracted during the
50 course of the employment, nor shall they include death due to natural causes
51 occurring while the worker is at work.

52 4. "Death" when mentioned as a basis for the right to compensation means
53 only death resulting from such violence and its resultant effects occurring within

54 three hundred weeks after the accident; except that in cases of occupational
55 disease, the limitation of three hundred weeks shall not be applicable.

56 5. Injuries sustained in company-owned or subsidized automobiles in
57 accidents that occur while traveling from the employee's home to the employer's
58 principal place of business or from the employer's principal place of business to
59 the employee's home are not compensable. The extension of premises doctrine is
60 abrogated to the extent it extends liability for accidents that occur on property
61 not owned or controlled by the employer even if the accident occurs on customary,
62 approved, permitted, usual or accepted routes used by the employee to get to and
63 from their place of employment.

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

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

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

77 9. For the purposes of this chapter, the term "minor" means a person who
78 has not attained the age of eighteen years; except that, for the purpose of
79 computing the compensation provided for in this chapter, the provisions of section
80 287.250 shall control.

81 10. In applying the provisions of this chapter, it is the intent of the
82 legislature to reject and abrogate earlier case law interpretations on the meaning
83 of or definition of "accident", "occupational disease", "arising out of", and "in the
84 course of the employment" to include, but not be limited to, holdings in: *Bennett*
85 *v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002);
86 *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*,
87 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
88 following those cases.

287.200. 1. Compensation for permanent total disability shall be paid

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

9 (1) For all injuries occurring on or after September 28, 1983, but before
10 September 28, 1986, the weekly compensation shall be an amount equal to
11 sixty-six and two-thirds percent of the injured employee's average weekly
12 earnings during the year immediately preceding the injury, as of the date of the
13 injury; provided that the weekly compensation paid under this subdivision shall
14 not exceed an amount equal to seventy percent of the state average weekly wage,
15 as such wage is determined by the division of employment security, as of the July
16 first immediately preceding the date of injury;

17 (2) For all injuries occurring on or after September 28, 1986, but before
18 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six
19 and two-thirds percent of the injured employee's average weekly earnings during
20 the year immediately preceding the injury, as of the date of the injury; provided
21 that the weekly compensation paid under this subdivision shall not exceed an
22 amount equal to seventy-five percent of the state average weekly wage, as such
23 wage is determined by the division of employment security, as of the July first
24 immediately preceding the date of injury;

25 (3) For all injuries occurring on or after August 28, 1990, but before
26 August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
27 and two-thirds percent of the injured employee's average weekly earnings as of
28 the date of the injury; provided that the weekly compensation paid under this
29 subdivision shall not exceed an amount equal to one hundred percent of the state
30 average weekly wage;

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

36 (5) For all injuries occurring on or after September 28, 1981, the weekly
37 compensation shall in no event be less than forty dollars per week.

38 **2. Permanent total disability benefits that have accrued through**
39 **the date of the injured employee's death are the only permanent total**
40 **disability benefits that are to be paid in accordance with section**
41 **287.230. The right to unaccrued compensation for permanent total**
42 **disability of an injured employee terminates on the date of the injured**
43 **employee's death in accordance with section 287.230, and does not**
44 **survive to the injured employee's dependents, estate, or other persons**
45 **to whom compensation might otherwise be payable.**

46 **3.** All claims for permanent total disability shall be determined in
47 accordance with the facts. When an injured employee receives an award for
48 permanent total disability but by the use of glasses, prosthetic appliances, or
49 physical rehabilitation the employee is restored to his regular work or its
50 equivalent, the life payment mentioned in subsection 1 of this section shall be
51 suspended during the time in which the employee is restored to his regular work
52 or its equivalent. The employer and the division shall keep the file open in the
53 case during the lifetime of any injured employee who has received an award of
54 permanent total disability. In any case where the life payment is suspended
55 under this subsection, the commission may at reasonable times review the case
56 and either the employee or the employer may request an informal conference with
57 the commission relative to the resumption of the employee's weekly life payment
58 in the case.

 287.220. 1. All cases of permanent disability where there has been
2 previous disability shall be compensated as herein provided. Compensation shall
3 be computed on the basis of the average earnings at the time of the last injury.
4 If any employee who has a preexisting permanent partial disability whether from
5 compensable injury or otherwise, of such seriousness as to constitute a hindrance
6 or obstacle to employment or to obtaining reemployment if the employee becomes
7 unemployed, and the preexisting permanent partial disability, if a body as a
8 whole injury, equals a minimum of fifty weeks of compensation or, if a major
9 extremity injury only, equals a minimum of fifteen percent permanent partial
10 disability, according to the medical standards that are used in determining such
11 compensation, receives a subsequent compensable injury resulting in additional
12 permanent partial disability so that the degree or percentage of disability, in an
13 amount equal to a minimum of fifty weeks compensation, if a body as a whole
14 injury or, if a major extremity injury only, equals a minimum of fifteen percent
15 permanent partial disability, caused by the combined disabilities is substantially

16 greater than that which would have resulted from the last injury, considered
17 alone and of itself, and if the employee is entitled to receive compensation on the
18 basis of the combined disabilities, the employer at the time of the last injury shall
19 be liable only for the degree or percentage of disability which would have resulted
20 from the last injury had there been no preexisting disability. After the
21 compensation liability of the employer for the last injury, considered alone, has
22 been determined by an administrative law judge or the commission, the degree
23 or percentage of employee's disability that is attributable to all injuries or
24 conditions existing at the time the last injury was sustained shall then be
25 determined by that administrative law judge or by the commission and the degree
26 or percentage of disability which existed prior to the last injury plus the disability
27 resulting from the last injury, if any, considered alone, shall be deducted from the
28 combined disability, and compensation for the balance, if any, shall be paid out
29 of a special fund known as the second injury fund, hereinafter provided for. If the
30 previous disability or disabilities, whether from compensable injury or otherwise,
31 and the last injury together result in total and permanent disability, the
32 minimum standards under this subsection for a body as a whole injury or a major
33 extremity injury shall not apply and the employer at the time of the last injury
34 shall be liable only for the disability resulting from the last injury considered
35 alone and of itself; except that if the compensation for which the employer at the
36 time of the last injury is liable is less than the compensation provided in this
37 chapter for permanent total disability, then in addition to the compensation for
38 which the employer is liable and after the completion of payment of the
39 compensation by the employer, the employee shall be paid the remainder of the
40 compensation that would be due for permanent total disability under section
41 287.200 out of a special fund known as the "Second Injury Fund" hereby created
42 exclusively for the purposes as in this section provided and for special weekly
43 benefits in rehabilitation cases as provided in section 287.141. Maintenance of
44 the second injury fund shall be as provided by section 287.710. The state
45 treasurer shall be the custodian of the second injury fund which shall be
46 deposited the same as are state funds and any interest accruing thereon shall be
47 added thereto. The fund shall be subject to audit the same as state funds and
48 accounts and shall be protected by the general bond given by the state
49 treasurer. Upon the requisition of the director of the division of workers'
50 compensation, warrants on the state treasurer for the payment of all amounts
51 payable for compensation and benefits out of the second injury fund shall be

52 issued.

53 2. In all cases in which a recovery against the second injury fund is
54 sought for permanent partial disability, permanent total disability, or death, the
55 state treasurer as custodian thereof shall be named as a party, and shall be
56 entitled to defend against the claim. The state treasurer, with the advice and
57 consent of the attorney general of Missouri, may enter into compromise
58 settlements as contemplated by section 287.390, or agreed statements of fact that
59 would affect the second injury fund. All awards for permanent partial disability,
60 permanent total disability, or death affecting the second injury fund shall be
61 subject to the provisions of this chapter governing review and appeal. For all
62 claims filed against the second injury fund on or after July 1, 1994, the attorney
63 general shall use assistant attorneys general except in circumstances where an
64 actual or potential conflict of interest exists, to provide legal services as may be
65 required in all claims made for recovery against the fund. Any legal expenses
66 incurred by the attorney general's office in the handling of such claims, including,
67 but not limited to, medical examination fees, expert witness fees, court reporter
68 expenses, travel costs, and related legal expenses shall be paid by the
69 fund. Effective July 1, 1993, the payment of such legal expenses shall be
70 contingent upon annual appropriations made by the general assembly, from the
71 fund, to the attorney general's office for this specific purpose.

72 3. If more than one injury in the same employment causes concurrent
73 temporary disabilities, compensation shall be payable only for the longest and
74 largest paying disability.

75 4. If more than one injury in the same employment causes concurrent and
76 consecutive permanent partial disability, compensation payments for each
77 subsequent disability shall not begin until the end of the compensation period of
78 the prior disability.

79 5. If an employer fails to insure or self-insure as required in section
80 287.280, funds from the second injury fund may be withdrawn to cover the fair,
81 reasonable, and necessary expenses to cure and relieve the effects of the injury
82 or disability of an injured employee in the employ of an uninsured employer, or
83 in the case of death of an employee in the employ of an uninsured employer,
84 funds from the second injury fund may be withdrawn to cover fair, reasonable,
85 and necessary expenses in the manner required in sections 287.240 and 287.241.
86 In defense of claims arising under this subsection, the treasurer of the state of
87 Missouri, as custodian of the second injury fund, shall have the same defenses to

88 such claims as would the uninsured employer. Any funds received by the
89 employee or the employee's dependents, through civil or other action, must go
90 towards reimbursement of the second injury fund, for all payments made to the
91 employee, the employee's dependents, or paid on the employee's behalf, from the
92 second injury fund pursuant to this subsection. The office of the attorney general
93 of the state of Missouri shall bring suit in the circuit court of the county in which
94 the accident occurred against any employer not covered by this chapter as
95 required in section 287.280.

96 6. Every three years the second injury fund shall have an actuarial study
97 made to determine the solvency of the fund, appropriate funding level of the fund,
98 and forecasted expenditures from the fund. The first actuarial study shall be
99 completed prior to July 1, 1988. The expenses of such actuarial studies shall be
100 paid out of the fund for the support of the division of workers' compensation.

101 7. The director of the division of workers' compensation shall maintain the
102 financial data and records concerning the fund for the support of the division of
103 workers' compensation and the second injury fund. The division shall also
104 compile and report data on claims made pursuant to subsection 9 of this
105 section. The attorney general shall provide all necessary information to the
106 division for this purpose.

107 8. All claims for fees and expenses filed against the second injury fund
108 and all records pertaining thereto shall be open to the public.

109 9. Any employee who at the time a compensable work-related injury is
110 sustained is employed by more than one employer, the employer for whom the
111 employee was working when the injury was sustained shall be responsible for
112 wage loss benefits applicable only to the earnings in that employer's employment
113 and the injured employee shall be entitled to file a claim against the second
114 injury fund for any additional wage loss benefits attributed to loss of earnings
115 from the employment or employments where the injury did not occur, up to the
116 maximum weekly benefit less those benefits paid by the employer in whose
117 employment the employee sustained the injury. The employee shall be entitled
118 to a total benefit based on the total average weekly wage of such employee
119 computed according to subsection 8 of section 287.250. The employee shall not
120 be entitled to a greater rate of compensation than allowed by law on the date of
121 the injury. The employer for whom the employee was working where the injury
122 was sustained shall be responsible for all medical costs incurred in regard to that
123 injury.

124 **10. No person shall be eligible to receive benefits from the**
125 **second injury fund for injuries occurring on or after January 1, 2009,**
126 **except for veterans with documented injuries that occurred while**
127 **serving in the United States military. The division shall compute**
128 **moneys to persons eligible for such award for injuries occurring before**
129 **January 1, 2009, and assess employers. Such employer assessment shall**
130 **be apportioned, collected, and not exceed the annual surcharge cap of**
131 **three percent as specified in section 287.715. Any remaining funds**
132 **after all awards have been satisfied shall lapse into the workers'**
133 **compensation fund. The division shall promulgate rules to implement**
134 **the provisions of this section. Any rule or portion of a rule, as that**
135 **term is defined in section 536.010, RSMo, that is created under the**
136 **authority delegated in this section shall become effective only if it**
137 **complies with and is subject to all of the provisions of chapter 536,**
138 **RSMo, and, if applicable, section 536.028, RSMo. This section and**
139 **chapter 536, RSMo, are nonseverable and if any of the powers vested**
140 **with the general assembly pursuant to chapter 536, RSMo, to review, to**
141 **delay the effective date, or to disapprove and annul a rule are**
142 **subsequently held unconstitutional, then the grant of rulemaking**
143 **authority and any rule proposed or adopted after August 28, 2008, shall**
144 **be invalid and void. This subsection shall become effective August 28,**
145 **2008.**

 287.230. 1. The death of the injured employee shall not affect the liability
2 of the employer to furnish compensation as in this chapter provided, so far as the
3 liability has accrued and become payable at the time of the death, and any
4 accrued and unpaid compensation due the employee shall be paid to his
5 dependents without administration, or if there are no dependents, to his personal
6 representative or other persons entitled thereto, but the death shall be deemed
7 to be the termination of the disability.

8 2. Where an employee is entitled to compensation under this chapter,
9 **exclusive of compensation as provided for in section 287.200**, for an
10 injury received and death ensues for any cause not resulting from the injury for
11 which [he] **the employee** was entitled to compensation, [payments of the unpaid
12 accrued compensation shall be paid, but] payments of the unpaid unaccrued
13 [balance] **compensation under section 287.190 and no other**
14 **compensation** for the injury shall [cease and all liability therefor shall

15 terminate unless there are] **be paid to the** surviving dependents at the time of
16 death.

17 **3. In applying the provisions of this chapter, it is the intent of**
18 **the legislature to reject and abrogate the holding in Schoemehl v.**
19 **Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. banc 2007), and**
20 **all cases citing, interpreting, applying, or following this case.**

Section B. Because of the need to clarify workers' compensation laws and
2 preserve the solvency of the workers' compensation system, section A of this act
3 is deemed necessary for the immediate preservation of the public health, welfare,
4 peace and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and section A of this act shall be in full force and
6 effect upon its passage and approval.

✓

Bill

Copy