

SECOND REGULAR SESSION

# SENATE BILL NO. 901

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LOUDON AND NODLER.

Pre-filed December 27, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3608S.011

## AN ACT

To repeal sections 287.020, 287.200, and 287.230, RSMo, and to enact in lieu thereof three 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Section A. Sections 287.020, 287.200, and 287.230, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 287.020,  
3 287.200, 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 worker's dependents, estate, or other persons to**  
45 **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.

          287.230. 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. 2007), and all**  
20 **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