

SECOND REGULAR SESSION

# SENATE BILL NO. 1027

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

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ADRIANE D. CROUSE, Secretary.

6147S.03I

## AN ACT

To repeal sections 287.020, 287.149, 287.170, and 287.390, RSMo, and to enact in lieu thereof four new sections relating to maximum medical improvement under workers' compensation laws.

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

Section A. Sections 287.020, 287.149, 287.170, and 287.390, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 287.020, 287.149, 287.170, and 287.390, 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 has  
6 been injured shall, when the employee is dead, also include his dependents, and  
7 other persons to whom compensation may be payable. The word "employee" shall  
8 also include all minors who work for an employer, whether or not such minors are  
9 employed in violation of law, and all such minors are hereby made of full age for  
10 all purposes under, in connection with, or arising out of this chapter. The word  
11 "employee" shall not include an individual who is the owner, as defined in  
12 subdivision (42) of section 301.010, and operator of a motor vehicle which is  
13 leased or contracted with a driver to a for-hire motor carrier operating within a  
14 commercial zone as defined in section 390.020 or 390.041, or operating under a  
15 certificate issued by the Missouri department of transportation or by the United  
16 States Department of Transportation, or any of its subagencies. The word  
17 "employee" also shall not include any person performing services for board,

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

18 lodging, aid, or sustenance received from any religious, charitable, or relief  
19 organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

80           9. For the purposes of this chapter, the term "minor" means a person who  
81 has not attained the age of eighteen years; except that, for the purpose of  
82 computing the compensation provided for in this chapter, the provisions of section  
83 287.250 shall control.

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

90 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or  
91 following those cases.

92 11. For the purposes of this chapter, "occupational diseases due to toxic  
93 exposure" shall only include the following: mesothelioma, asbestosis, berylliosis,  
94 coal worker's pneumoconiosis, brochiolitis obliterans, silicosis, silicotuberculosis,  
95 manganism, acute myelogenous leukemia, and myelodysplastic syndrome.

96 **12. For the purposes of this chapter, "maximum medical**  
97 **improvement" shall mean the point at which the injured employee's**  
98 **medical condition has stabilized and can no longer reasonably improve.**

287.149. 1. Temporary total disability or temporary partial disability  
2 benefits shall be paid throughout the rehabilitative process. **Temporary total**  
3 **disability or temporary partial disability benefits shall continue until**  
4 **the employee reaches maximum medical improvement.**

5 2. The permanency of the employee's disability under sections 287.170 to  
6 287.200 shall not be established, determined or adjudicated while the employee  
7 is participating in rehabilitation services.

8 3. Refusal of the employee to accept rehabilitation services or submit to  
9 a vocational rehabilitation assessment as deemed necessary by the employer shall  
10 result in a fifty percent reduction in all disability payments to an employee,  
11 including temporary partial disability benefits paid pursuant to section 287.180,  
12 for each week of the period of refusal.

287.170. 1. For temporary total disability the employer shall pay  
2 compensation [for not] **until the employee reaches maximum medical**  
3 **improvement, but in no event** more than four hundred weeks during the  
4 continuance of such disability at the weekly rate of compensation in effect under  
5 this section on the date of the injury for which compensation is being made. The  
6 amount of such compensation shall be computed as follows:

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

15 (2) For all injuries occurring on or after September 28, 1986, but before

16 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six  
17 and two-thirds percent of the injured employee's average weekly earnings as of  
18 the date of the injury; provided that the weekly compensation paid under this  
19 subdivision shall not exceed an amount equal to seventy-five percent of the state  
20 average weekly wage, as such wage is determined by the division of employment  
21 security, as of the July first immediately preceding the date of injury;

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

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

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

35 2. Temporary total disability payments shall be made to the claimant by  
36 check or other negotiable instruments approved by the director which will not  
37 result in delay in payment and shall be forwarded directly to the claimant  
38 without intervention, or, when requested, to claimant's attorney if represented,  
39 except as provided in section 454.517, by any other party except by order of the  
40 division of workers' compensation.

41 3. An employee is disqualified from receiving temporary total disability  
42 during any period of time in which the claimant applies and receives  
43 unemployment compensation.

44 4. If the employee is terminated from post-injury employment based upon  
45 the employee's post-injury misconduct, neither temporary total disability nor  
46 temporary partial disability benefits under this section or section 287.180 are  
47 payable. As used in this section, the phrase "post-injury misconduct" shall not  
48 include absence from the workplace due to an injury unless the employee is  
49 capable of working with restrictions, as certified by a physician.

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  
6 law judge or the commission, nor shall an administrative law judge or the  
7 commission approve any settlement which is not in accordance with the rights of  
8 the parties as given in this chapter. No such agreement shall be valid unless  
9 made after seven days from the date of the injury or death. An administrative  
10 law judge, or the commission, shall approve a settlement agreement as valid and  
11 enforceable as long as the settlement is not the result of undue influence or fraud,  
12 the employee fully understands his or her rights and benefits, and voluntarily  
13 agrees 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 to  
31 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 shall not be construed as an admission of liability.

40           **7. (1) In the case of compromise settlements offered after a**  
41 **claimant has reached maximum medical improvement, upon receipt of**  
42 **a permanent disability rating from the employer's physician or the**  
43 **physician selected by the claimant, a claimant shall have a period of six**  
44 **months from such date to acquire a rating from a second physician of**  
45 **his or her own choosing.**

46           **(2) Absent a finding of extenuating circumstances by an**  
47 **administrative law judge or the commission, if after six months a**  
48 **claimant has not acquired a rating from a second physician, any**  
49 **compromise settlement entered into under this section shall be based**  
50 **upon the initial rating.**

51           **(3) A finding of extenuating circumstances by an administrative**  
52 **law judge or the commission shall require more than failure of the**  
53 **claimant to timely obtain a rating from a second physician.**

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