

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 66

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:

1 Section A. Sections 287.020, 287.149, 287.170, and 287.390,
2 RSMo, are repealed and four new sections enacted in lieu thereof,
3 to be known as sections 287.020, 287.149, 287.170, and 287.390,
4 to read as follows:

5 287.020. 1. The word "employee" as used in this chapter
6 shall be construed to mean every person in the service of any
7 employer, as defined in this chapter, under any contract of hire,
8 express or implied, oral or written, or under any appointment or
9 election, including executive officers of corporations. Except
10 as otherwise provided in section 287.200, any reference to any
11 employee who has been injured shall, when the employee is dead,
12 also include his dependents, and other persons to whom
13 compensation may be payable. The word "employee" shall also
14 include all minors who work for an employer, whether or not such
15 minors are employed in violation of law, and all such minors are
16 hereby made of full age for all purposes under, in connection

1 with, or arising out of this chapter. The word "employee" shall
2 not include an individual who is the owner, as defined in
3 subdivision (42) of section 301.010, and operator of a motor
4 vehicle which is leased or contracted with a driver to a for-hire
5 motor carrier operating within a commercial zone as defined in
6 section 390.020 or 390.041, or operating under a certificate
7 issued by the Missouri department of transportation or by the
8 United States Department of Transportation, or any of its
9 subagencies. The word "employee" also shall not include any
10 person performing services for board, lodging, aid, or sustenance
11 received from any religious, charitable, or relief organization.

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

18 3. (1) In this chapter the term "injury" is hereby defined
19 to be an injury which has arisen out of and in the course of
20 employment. An injury by accident is compensable only if the
21 accident was the prevailing factor in causing both the resulting
22 medical condition and disability. "The prevailing factor" is
23 defined to be the primary factor, in relation to any other
24 factor, causing both the resulting medical condition and
25 disability.

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

28 (a) It is reasonably apparent, upon consideration of all

1 the circumstances, that the accident is the prevailing factor in
2 causing the injury; and

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

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

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

13 (5) The terms "injury" and "personal injuries" shall mean
14 violence to the physical structure of the body and to the
15 personal property which is used to make up the physical structure
16 of the body, such as artificial dentures, artificial limbs, glass
17 eyes, eyeglasses, and other prostheses which are placed in or on
18 the body to replace the physical structure and such disease or
19 infection as naturally results therefrom. These terms shall in
20 no case except as specifically provided in this chapter be
21 construed to include occupational disease in any form, nor shall
22 they be construed to include any contagious or infectious disease
23 contracted during the course of the employment, nor shall they
24 include death due to natural causes occurring while the worker is
25 at work.

26 4. "Death" when mentioned as a basis for the right to
27 compensation means only death resulting from such violence and
28 its resultant effects occurring within three hundred weeks after

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

3 5. Injuries sustained in company-owned or subsidized
4 automobiles in accidents that occur while traveling from the
5 employee's home to the employer's principal place of business or
6 from the employer's principal place of business to the employee's
7 home are not compensable. The extension of premises doctrine is
8 abrogated to the extent it extends liability for accidents that
9 occur on property not owned or controlled by the employer even if
10 the accident occurs on customary, approved, permitted, usual or
11 accepted routes used by the employee to get to and from their
12 place of employment.

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

17 7. As used in this chapter and all acts amendatory thereof,
18 the term "commission" shall hereafter be construed as meaning and
19 referring exclusively to the labor and industrial relations
20 commission of Missouri, and the term "director" shall hereafter
21 be construed as meaning the director of the department of
22 insurance, financial institutions and professional registration
23 of the state of Missouri or such agency of government as shall
24 exercise the powers and duties now conferred and imposed upon the
25 department of insurance, financial institutions and professional
26 registration of the state of Missouri.

27 8. The term "division" as used in this chapter means the
28 division of workers' compensation of the department of labor and

1 industrial relations of the state of Missouri.

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

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

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

22 12. For the purposes of this chapter, "maximum medical
23 improvement" shall mean the point at which the injured employee's
24 medical condition has stabilized and can no longer reasonably
25 improve, as determined by the employer's physician.

26 287.149. 1. Temporary total disability or temporary
27 partial disability benefits shall be paid throughout the
28 rehabilitative process. Temporary total disability or temporary

1 partial disability benefits shall continue until the employee
2 reaches maximum medical improvement, unless such benefits are
3 terminated by the employee's return to work or are terminated as
4 otherwise specified in this chapter.

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

9 3. Refusal of the employee to accept rehabilitation
10 services or submit to a vocational rehabilitation assessment as
11 deemed necessary by the employer shall result in a fifty percent
12 reduction in all disability payments to an employee, including
13 temporary partial disability benefits paid pursuant to section
14 287.180, for each week of the period of refusal.

15 287.170. 1. For temporary total disability the employer
16 shall pay compensation [for not] until the employee reaches
17 maximum medical improvement unless such benefits are terminated
18 by the employee's return to work or are terminated as otherwise
19 specified in this chapter, but in no event more than four hundred
20 weeks during the continuance of such disability at the weekly
21 rate of compensation in effect under this section on the date of
22 the injury for which compensation is being made. The amount of
23 such compensation shall be computed as follows:

24 (1) For all injuries occurring on or after September 28,
25 1983, but before September 28, 1986, the weekly compensation
26 shall be an amount equal to sixty-six and two-thirds percent of
27 the injured employee's average weekly earnings as of the date of
28 the injury; provided that the weekly compensation paid under this

1 subdivision shall not exceed an amount equal to seventy percent
2 of the state average weekly wage, as such wage is determined by
3 the division of employment security, as of the July first
4 immediately preceding the date of injury;

5 (2) For all injuries occurring on or after September 28,
6 1986, but before August 28, 1990, the weekly compensation shall
7 be an amount equal to sixty-six and two-thirds percent of the
8 injured employee's average weekly earnings as of the date of the
9 injury; provided that the weekly compensation paid under this
10 subdivision shall not exceed an amount equal to seventy-five
11 percent of the state average weekly wage, as such wage is
12 determined by the division of employment security, as of the July
13 first immediately preceding the date of injury;

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

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

28 (5) For all injuries occurring on or after September 28,

1 1981, the weekly compensation shall in no event be less than
2 forty dollars per week.

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

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

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

21 287.390. 1. Parties to claims hereunder may enter into
22 voluntary agreements in settlement thereof, but no agreement by
23 an employee or his or her dependents to waive his or her rights
24 under this chapter shall be valid, nor shall any agreement of
25 settlement or compromise of any dispute or claim for compensation
26 under this chapter be valid until approved by an administrative
27 law judge or the commission, nor shall an administrative law
28 judge or the commission approve any settlement which is not in

1 accordance with the rights of the parties as given in this
2 chapter. No such agreement shall be valid unless made after
3 seven days from the date of the injury or death. An
4 administrative law judge, or the commission, shall approve a
5 settlement agreement as valid and enforceable as long as the
6 settlement is not the result of undue influence or fraud, the
7 employee fully understands his or her rights and benefits, and
8 voluntarily agrees to accept the terms of the agreement.

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

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

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

1 5. In any claim under this chapter where an offer of
2 settlement is made in writing and filed with the division by the
3 employer, an employee is entitled to one hundred percent of the
4 amount offered, provided such employee is not represented by
5 counsel at the time the offer is tendered. Where such offer of
6 settlement is not accepted and where additional proceedings occur
7 with regard to the employee's claim, the employee is entitled to
8 one hundred percent of the amount initially offered. Legal
9 counsel representing the employee shall receive reasonable fees
10 for services rendered.

11 6. As used in this chapter, "amount in dispute" means the
12 dollar amount in excess of the dollar amount offered or paid by
13 the employer. An offer of settlement shall not be construed as
14 an admission of liability.

15 7. (1) In the case of compromise settlements offered after
16 a claimant has reached maximum medical improvement, upon receipt
17 of a permanent disability rating from the employer's physician, a
18 claimant shall have a period of nine months from such date to
19 acquire a rating from a second physician of his or her own
20 choosing.

21 (2) Absent a finding of extenuating circumstances by an
22 administrative law judge or the commission, if after nine months
23 a claimant has not acquired a rating from a second physician, any
24 compromise settlement entered into under this section shall be
25 based upon the initial rating.

26 (3) A finding of extenuating circumstances by an
27 administrative law judge or the commission shall require more
28 than failure of the claimant to timely obtain a rating from a

1 second physician.

2 (4) The provisions of this subsection may be waived by the
3 employer with or without stating a cause.