

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 374
90TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 12, 1999, with recommendation that the Senate Committee Substitute do pass.
Senate Committee Substitute for Senate Bill No. 374, adopted April 21, 1999.
Taken up for Perfection April 21, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S1705.09P

AN ACT

To repeal sections 287.203 and 287.655, RSMo 1994, and sections 287.160 and 287.210, RSMo Supp. 1998, relating to workers' compensation, and to enact in lieu thereof four new sections relating to the same subject.

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

Section A. Sections 287.203 and 287.655, RSMo 1994, and sections 287.160 and 287.210, RSMo Supp. 1998, are repealed and four new sections enacted in lieu thereof, to be known as sections 287.160, 287.203, 287.210 and 287.655, to read as follows:

287.160. 1. Except as provided in section 287.140, no compensation shall be payable for the first three days or less of disability during which the employer is open for the purpose of operating its business or enterprise unless the disability shall last longer than fourteen days. If the disability lasts longer than fourteen days, payment for the first three days shall be made retroactively to the claimant.

2. Compensation shall be payable as the wages were paid prior to the injury, but in any event at least once every two weeks. If an injured employee claims benefits pursuant to this section, an employer may, if the employee agrees in writing, pay directly to the employee any benefits due pursuant to section 287.170. The employer shall continue such payments until the insurer starts making the payments or the claim is contested by any party. Where the claim is found to be compensable the employer's workers' compensation insurer shall indemnify the

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

employer for any payments made pursuant to this subsection. If the employee's claim is found to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer, or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

- (1) Lump sum payment;
- (2) Refund of the compensation equivalent of any accumulated sick or disability leave;
- (3) Payroll deduction; or

(4) Secured installment plan. If the employee is no longer employed by such employer, the employer may garnish the employee's wages or execute upon any property, except real estate, of the employee. Nothing in this subsection shall be construed to require any employer to make payments directly to the employee.

3. Where weekly benefit payments that are not being contested by the employer or his insurer are due, and if such weekly benefit payments are made more than [thirty] **fifteen** days after becoming due, the weekly benefit payments that are late shall be increased by ten percent simple interest per annum **from the date when due until paid**. [Provided, however, that if such claim for weekly compensation is contested by the employee, and the employer or his insurer have not paid the disputed weekly benefit payments or lump sum within thirty days of when the administrative law judge's order becomes final, or from the date of a decision by the labor and industrial relations commission, or from the date of the last judicial review, whichever is later, interest on such disputed weekly benefit payments or lump sum so ordered, shall be increased by ten percent simple interest per annum beginning thirty days from the date of such order. Provided, however, that if such claims for weekly compensation are contested solely by the employer or insurer, no interest shall be payable until after thirty days after the award of the administrative law judge. The state of Missouri or any of its political subdivisions, as an employer, is liable for any such interest assessed against it for failure to promptly pay on any award issued against it under this chapter.] **Interest shall be due fifteen days after an award of the administrative law judge unless and to the extent otherwise modified upon review by the commission or appeal to an appellate court.**

4. Compensation shall be payable in accordance with the rules given in sections 287.170, 287.180, 287.190, 287.200, 287.240, and 287.250.

5. The employer shall not be entitled to credit for wages or such pay benefits paid to the employee or his dependents on account of the injury or death except as provided in section 287.270.

287.203. **1.** Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be

granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. Reasonable cost of recovery shall be awarded to the prevailing party. **Upon entry of an award for temporary total benefits, such benefits shall not be terminated except by consent of the employee, or pursuant to subsection 2 of this section, or in accordance with the terms of the award, if so ordered.**

2. If an employer wishes to terminate compensation after an award for temporary benefits, the employer shall file with the commission and provide a copy to the employee or his or her attorney a complete medical report that provides findings that justify termination of temporary total benefits, including the physician's opinion as to permanent disability, if any. In such event temporary total disability benefits may be terminated on notice to the employee unless the employee objects. If the employee objects, the employer may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of the hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision to terminate compensation only upon proof that the employer is justified in terminating compensation pursuant to the provisions of chapter 287, RSMo. The division shall render a decision within fifteen days of the date of the hearing. The employer shall continue to provide compensation until a decision has been rendered by the division that such employer may terminate compensation. If temporary benefits are provided after the date the division finds that such benefits were no longer due, the employer shall receive a credit for such benefits paid against any award. In the event no award is found due to the employee, the employer shall receive an award against the employee for such excess benefits. In lieu of an employer receiving an award against the employee for such excess benefits, in the event no award is found due to the employee and benefits were paid by an insurance carrier required to pay a tax pursuant to section 287.690, such insurance carrier shall be eligible to take a refundable tax credit pursuant to section 287.690 equal to the amount of the excess benefits paid in its return filed pursuant to section 287.710 for the taxable year in which the excess benefits were paid. In no event shall an insurance carrier be eligible to take such a tax credit if the employer receives an award against the employee for the excess benefits.

287.210. 1. After an employee has received an injury he shall from time to time thereafter during disability submit to reasonable medical examination at the request of the employer, his insurer, the commission, the division or an administrative law judge, the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee may have his own physician present, and if the employee refuses to submit to the examination, or in any way obstructs it, his right to compensation shall be

forfeited during such period unless in the opinion of the commission the circumstances justify the refusal or obstruction.

2. The commission, the division or administrative law judge shall, when deemed necessary, appoint a duly qualified impartial physician to examine the injured employee, and any physician so chosen, if he accepts the appointment, shall promptly make the examination requested and make a complete medical report to the commission or the division in such duplication as to provide all parties with copies thereof. The physician's fee shall be fair and reasonable, as provided in subsection 3 of section 287.140, and the fee and other reasonable costs of the impartial examination may be paid as other costs under this chapter. If all the parties shall have had reasonable access thereto, the report of the physician shall be admissible in evidence.

3. The testimony of any physician who treated or examined the injured employee shall be admissible in evidence in any proceedings for compensation under this chapter, but only if the medical report of the physician has been made available to all parties as in this section provided. Immediately upon receipt of notice from the division or the commission setting a date for hearing of a case in which the nature and extent of an employee's disability is to be determined, the parties or their attorneys shall arrange, without charge or costs, each to the other, for an exchange of all medical reports, including those made both by treating and examining physician or physicians, to the end that the parties may be commonly informed of all medical findings and opinions. The exchange of medical reports shall be made at least seven days before the date set for the hearing and failure of any party to comply may be grounds for asking for and receiving a continuance, upon proper showing by the party to whom the medical reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical report of the treating or examining physician at least seven days before such physician's deposition or personal testimony at the hearing, as in this section provided, upon the objection of the party who was not provided with the medical report, the physician shall not be permitted to testify at that hearing or by medical deposition.

4. Upon request, an administrative law judge, the division, or the commission shall be provided with a copy of any medical report.

5. As used in this chapter the terms "physician's report" and "medical report" mean the report of any physician made on any printed form authorized by the division or the commission or any complete medical report. As used in this chapter the term "complete medical report" means the report of a physician giving the physician's qualifications and the patient's history, complaints, details of the findings of any and all laboratory, X-ray and all other technical examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage of permanent partial disability, if any. An element or elements of a complete medical report may be met by the physician's records.

6. Upon the request of a party, the physician or physicians who treated or are treating the

injured employee shall be required to furnish to the parties a rating and complete medical report on the injured employee, at the expense of the party selecting the physician, along with a complete copy of the physician's clinical record including copies of any records and reports received from other health care providers.

7. The testimony of a treating or examining physician may be submitted in evidence on the issues in controversy by a complete medical report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit a complete medical report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the physician by deposition. The notice shall include a copy of the report and all the clinical and treatment records of the physician including copies of all records and reports received by the physician from other health care providers. The party offering the report must make the physician available for cross-examination testimony by deposition not later than seven days before the matter is set for hearing, and each cross-examiner shall compensate the physician for the portion of testimony obtained in an amount not to exceed a rate of reasonable compensation taking into consideration the specialty practiced by the physician. Cross-examination testimony shall not bind the cross-examining party. Any testimony obtained by the offering party shall be at that party's expense on a proportional basis, including the deposition fee of the physician. Upon request of any party, the party offering a complete medical report in evidence must also make available copies of X rays or other diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report by providing written objections to the offering party stating the grounds for the dispute, and at the request of any party, the administrative law judge shall rule upon such objections upon pretrial hearing whether the report meets the requirements of a complete medical report and upon the admissibility of the report or portions thereof. If no objections are filed the report is admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the parties from agreeing to admit medical reports or records by consent. The provisions of this subsection shall [not] apply to claims against the second injury fund **where the employee offers medical records into evidence, and, in that event the state may require the employee to submit to a reasonable medical exam in the manner as provided pursuant to subsection 1 of this section and the state may also introduce medical records pursuant to this subsection.**

8. Certified copies of the proceedings before any coroner holding an inquest over the body of any employee receiving an injury in the course of his employment resulting in death shall be admissible in evidence in any proceedings for compensation under this chapter, and it shall be the duty of the coroner to give notice of the inquest to the employer and the dependents of the

deceased employee, who shall have the right to cross-examine the witness.

9. The division or the commission may in its discretion in extraordinary cases order a postmortem examination and for that purpose may also order a body exhumed.

287.655. Any claim before the division may be dismissed for failure to prosecute in accordance with rules and regulations **which shall be** promulgated by the commission, except such notice need not be by certified or registered mail if the person or entity to whom notice is directed is represented by counsel and counsel is also given such notice at counsel's last known address. To dismiss a claim the administrative law judge shall enter an order of dismissal which shall be deemed an award and subject to review and appeal in the same manner as provided for other awards in this chapter.

Unofficial

Bill

Copy