

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 8
96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Offered February 9, 2011.

Senate Substitute adopted, February 9, 2011.

Taken up for Perfection February 9, 2011. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0367S.04P

AN ACT

To repeal sections 287.020, 287.067, and 287.120, RSMo, and to enact in lieu thereof
three new sections relating to workers' compensation.

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

Section A. Sections 287.020, 287.067, and 287.120, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 287.020,
3 287.067, and 287.120, 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 subsection 43 of section 301.010, and operator of a motor vehicle which is leased
13 or contracted with a driver to a for-hire motor carrier operating within a

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

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.

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

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

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

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

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

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

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

41 (5) The terms "injury" and "personal injuries" shall mean violence to the
42 physical structure of the body and to the personal property which is used to make
43 up the physical structure of the body, such as artificial dentures, artificial limbs,
44 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
45 to replace the physical structure and such disease or infection as naturally results
46 therefrom. These terms shall in no case except as specifically provided in this
47 chapter be construed to include **toxic exposure as defined in section**
48 **287.067**, occupational disease in any form, nor shall they be construed to include
49 any contagious or infectious disease contracted during the course of the

50 employment, nor shall they include death due to natural causes occurring while
51 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, financial institutions and professional registration of the state of
72 Missouri or such agency of government as shall exercise the powers and duties
73 now conferred and imposed upon the department of insurance, financial
74 institutions and professional registration of the state of Missouri.

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

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

82 10. In applying the provisions of this chapter, it is the intent of the
83 legislature to reject and abrogate earlier case law interpretations on the meaning
84 of or definition of "accident", "occupational disease", "arising out of", and "in the
85 course of the employment" to include, but not be limited to, holdings in: Bennett

86 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);
87 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,
88 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
89 following those cases.

287.067. 1. In this chapter the term "occupational disease" is hereby
2 defined to mean, unless a different meaning is clearly indicated by the context,
3 an identifiable disease arising with or without human fault out of and in the
4 course of the employment. Ordinary diseases of life to which the general public
5 is exposed outside of the employment shall not be compensable, except where the
6 diseases follow as an incident of an occupational disease as defined in this
7 section. The disease need not to have been foreseen or expected but after its
8 contraction it must appear to have had its origin in a risk connected with the
9 employment and to have flowed from that source as a rational consequence.

10 2. An injury by occupational disease is compensable only if the
11 occupational exposure was the prevailing factor in causing both the resulting
12 medical condition and disability. The "prevailing factor" is defined to be the
13 primary factor, in relation to any other factor, causing both the resulting medical
14 condition and disability. Ordinary, gradual deterioration, or progressive
15 degeneration of the body caused by aging or by the normal activities of day-to-day
16 living shall not be compensable.

17 3. An injury due to repetitive motion is recognized as an occupational
18 disease for purposes of this chapter. An occupational disease due to repetitive
19 motion is compensable only if the occupational exposure was the prevailing factor
20 in causing both the resulting medical condition and disability. The "prevailing
21 factor" is defined to be the primary factor, in relation to any other factor, causing
22 both the resulting medical condition and disability. Ordinary, gradual
23 deterioration, or progressive degeneration of the body caused by aging or by the
24 normal activities of day-to-day living shall not be compensable.

25 4. "Loss of hearing due to industrial noise" is recognized as an
26 occupational disease for purposes of this chapter and is hereby defined to be a
27 loss of hearing in one or both ears due to prolonged exposure to harmful noise in
28 employment. "Harmful noise" means sound capable of producing occupational
29 deafness.

30 5. "Radiation disability" is recognized as an occupational disease for
31 purposes of this chapter and is hereby defined to be that disability due to
32 radioactive properties or substances or to Roentgen rays (X-rays) or exposure to

33 ionizing radiation caused by any process involving the use of or direct contact
34 with radium or radioactive properties or substances or the use of or direct
35 exposure to Roentgen rays (X-rays) or ionizing radiation.

36 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or
37 disease of the heart or cardiovascular system, including carcinoma, may be
38 recognized as occupational diseases for the purposes of this chapter and are
39 defined to be disability due to exposure to smoke, gases, carcinogens, inadequate
40 oxygen, of paid firefighters of a paid fire department or paid police officers of a
41 paid police department certified under chapter 590 if a direct causal relationship
42 is established, or psychological stress of firefighters of a paid fire department if
43 a direct causal relationship is established.

44 7. Any employee who is exposed to and contracts any contagious or
45 communicable disease arising out of and in the course of his or her employment
46 shall be eligible for benefits under this chapter as an occupational disease.

47 8. With regard to occupational disease due to repetitive motion, if the
48 exposure to the repetitive motion which is found to be the cause of the injury is
49 for a period of less than three months and the evidence demonstrates that the
50 exposure to the repetitive motion with the immediate prior employer was the
51 prevailing factor in causing the injury, the prior employer shall be liable for such
52 occupational disease.

53 **9. A disease related to toxic exposure shall not be recognized as**
54 **an occupational disease for the purposes of this chapter. For the**
55 **purposes of this chapter, "toxic exposure" shall mean any prolonged**
56 **chemical, substance, or material exposure that can cause death,**
57 **abnormalities, disease, mutations, cancer, deformities, or reproductive**
58 **malfunctions in a human organism if consumed, inhaled, or absorbed**
59 **by a human or when otherwise entering the human body in sufficient**
60 **quantities to do so. The term "toxic exposure" shall not include any**
61 **injury or disease as described under subsections 4, 5, 6, or 7 of this**
62 **section or a disease caused by exposure to cigarette smoke.**

287.120. 1. Every employer subject to the provisions of this chapter shall
2 be liable, irrespective of negligence, to furnish compensation under the provisions
3 of this chapter for personal injury or death of the employee by accident arising
4 out of and in the course of the employee's employment[.]. **Any employee of**
5 **such employer shall not be liable for any injury or death for which**
6 **compensation is recoverable under this chapter and every employer and**

7 **employees of such employer** shall be released from all other liability therefor
8 whatsoever, whether to the employee or any other person, **except that an**
9 **employee shall not be released from liability for injury or death if the**
10 **employee engaged in an affirmative negligent act that purposefully and**
11 **dangerously caused or increased the risk of injury.** The term "accident"
12 as used in this section shall include, but not be limited to, injury or death of the
13 employee caused by the unprovoked violence or assault against the employee by
14 any person.

15 2. The rights and remedies herein granted to an employee shall exclude
16 all other rights and remedies of the employee, his wife, her husband, parents,
17 personal representatives, dependents, heirs or next kin, at common law or
18 otherwise, on account of such accidental injury or death, except such rights and
19 remedies as are not provided for by this chapter.

20 3. No compensation shall be allowed under this chapter for the injury or
21 death due to the employee's intentional self-inflicted injury, but the burden of
22 proof of intentional self-inflicted injury shall be on the employer or the person
23 contesting the claim for allowance.

24 4. Where the injury is caused by the failure of the employer to comply
25 with any statute in this state or any lawful order of the division or the
26 commission, the compensation and death benefit provided for under this chapter
27 shall be increased fifteen percent.

28 5. Where the injury is caused by the failure of the employee to use safety
29 devices where provided by the employer, or from the employee's failure to obey
30 any reasonable rule adopted by the employer for the safety of employees, the
31 compensation and death benefit provided for herein shall be reduced at least
32 twenty-five but not more than fifty percent; provided, that it is shown that the
33 employee had actual knowledge of the rule so adopted by the employer; and
34 provided, further, that the employer had, prior to the injury, made a reasonable
35 effort to cause his or her employees to use the safety device or devices and to obey
36 or follow the rule so adopted for the safety of the employees.

37 6. (1) Where the employee fails to obey any rule or policy adopted by the
38 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
39 controlled drugs in the workplace, the compensation and death benefit provided
40 for herein shall be reduced fifty percent if the injury was sustained in conjunction
41 with the use of alcohol or nonprescribed controlled drugs.

42 (2) If, however, the use of alcohol or nonprescribed controlled drugs in

43 violation of the employer's rule or policy is the proximate cause of the injury, then
44 the benefits or compensation otherwise payable under this chapter for death or
45 disability shall be forfeited.

46 (3) The voluntary use of alcohol to the percentage of blood alcohol
47 sufficient under Missouri law to constitute legal intoxication shall give rise to a
48 rebuttable presumption that the voluntary use of alcohol under such
49 circumstances was the proximate cause of the injury. A preponderance of the
50 evidence standard shall apply to rebut such presumption. An employee's refusal
51 to take a test for alcohol or a nonprescribed controlled substance, as defined by
52 section 195.010, RSMo, at the request of the employer shall result in the
53 forfeiture of benefits under this chapter if the employer had sufficient cause to
54 suspect use of alcohol or a nonprescribed controlled substance by the claimant or
55 if the employer's policy clearly authorizes post-injury testing.

56 7. Where the employee's participation in a recreational activity or
57 program is the prevailing cause of the injury, benefits or compensation otherwise
58 payable under this chapter for death or disability shall be forfeited regardless
59 that the employer may have promoted, sponsored or supported the recreational
60 activity or program, expressly or impliedly, in whole or in part. The forfeiture of
61 benefits or compensation shall not apply when:

62 (1) The employee was directly ordered by the employer to participate in
63 such recreational activity or program;

64 (2) The employee was paid wages or travel expenses while participating
65 in such recreational activity or program; or

66 (3) The injury from such recreational activity or program occurs on the
67 employer's premises due to an unsafe condition and the employer had actual
68 knowledge of the employee's participation in the recreational activity or program
69 and of the unsafe condition of the premises and failed to either curtail the
70 recreational activity or program or cure the unsafe condition.

71 8. Mental injury resulting from work-related stress does not arise out of
72 and in the course of the employment, unless it is demonstrated that the stress is
73 work related and was extraordinary and unusual. The amount of work stress
74 shall be measured by objective standards and actual events.

75 9. A mental injury is not considered to arise out of and in the course of
76 the employment if it resulted from any disciplinary action, work evaluation, job
77 transfer, layoff, demotion, termination or any similar action taken in good faith
78 by the employer.

79 10. The ability of a firefighter to receive benefits for psychological stress
80 under section 287.067 shall not be diminished by the provisions of subsections 8
81 and 9 of this section.

✓

Unofficial

Bill

Copy