

FIRST REGULAR SESSION

HOUSE BILL NO. 321

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WILSON (130), CUNNINGHAM (86), HUNTER, AVERY, WOOD, DIXON, HANAWAY, RUESTMAN, JETTON, SANDER, GUEST, BEARDEN, YATES, CROWELL, RECTOR, ST. ONGE, GOODMAN, JOHNSON (47), SCHLOTTACH, DUSENBERG, MARSH, SCHAAF, DETHROW (Co-sponsors), BAKER, ERVIN, DAVIS (19), WILSON (119), MORRIS, CUNNINGHAM (145), HOLAND, WASSON, ANGST, MUNZLINGER, STEFANICK, QUINN, BEHNEN, WRIGHT, PRATT, ICET, RICHARD, PEARCE, LAGER, EMERY, PORTWOOD, PURGASON, COOPER (120), NIEVES, ROARK, DEEKEN, LIPKE (157), KINGERY, BEAN, TOWNLEY, MOORE, KELLY (144), BIVINS, PHILLIPS, JACKSON, COOPER (155), SMITH (118), DEMPSEY, FARES, MAY, WALLACE, BOUGH, MAYER, SUTHERLAND, STEVENSON, THRELKELD, TAYLOR, HOLAND, SELF, CRAWFORD, MYERS, KING AND LUETKEMEYER.

Read 1st time January 29, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1251L.02I

AN ACT

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

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

Section A. Sections 287.020 and 287.067, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.020 and 287.067, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,
3 express or implied, oral or written, or under any appointment or election, including executive
4 officers of corporations. Any reference to any employee who has been injured shall, when the
5 employee is dead, also include his dependents, and other persons to whom compensation may
6 be payable. The word "employee" shall also include all minors who work for an employer,
7 whether or not such minors are employed in violation of law, and all such minors are hereby
8 made of full age for all purposes under, in connection with, or arising out of this chapter. The
9 word "employee" shall not include an individual who is the owner and operator of a motor

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

10 vehicle which is leased or contracted with a driver to a for-hire common or contract motor
11 vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041,
12 RSMo, or operating under a certificate issued by the motor carrier and railroad safety division
13 of the department of economic development or by the interstate commerce commission.

14 2. The word "accident" as used in this chapter shall, [unless a different meaning is clearly
15 indicated by the context,] be construed to mean an unexpected **traumatic event or unusual**
16 **strain identifiable by time and place of occurrence** [or unforeseen identifiable event or series
17 of events happening suddenly and violently, with or without human fault, and] producing at the
18 time objective symptoms of an injury, **caused by a specific event during a single work shift.**
19 [An injury is compensable if it is clearly work related. An injury is clearly work related if work
20 was a substantial factor in the cause of the resulting medical condition or disability. An injury
21 is not compensable merely because work was a triggering or precipitating factor.]

22 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
23 out of and in the course of employment. The injury must be incidental to and not independent
24 of the relation of employer and employee. **An injury by accident is compensable only if the**
25 **accident was the dominant factor in causing the mental or physical condition or disability.**
26 Ordinary, gradual deterioration or progressive degeneration of the body caused by aging **or by**
27 **the normal physical and mental activities of day to day living** shall not be compensable[,
28 except where the deterioration or degeneration follows as an incident of employment].

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

31 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
32 [employment] **accident** is [a substantial] **the dominant** factor in causing the injury; and

33 (b) [It can be seen to have followed as a natural incident of the work; and

34 (c) It can be fairly traced to the employment as a proximate cause; and

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

38 (3) **This chapter shall not apply to personal health conditions of an employee which**
39 **manifest themselves in the employment in which the accident is not the dominant factor**
40 **in the resulting need for medical treatment.**

41 (4) **An injury resulting directly or indirectly from idiopathic causes is not**
42 **compensable.**

43 (5) **"Dominant factor" shall mean the accident is the prevailing factor in relation**
44 **to any other factors contributing to the mental or physical condition or disability.**

45 (6) **A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular**

46 **accident or myocardial infarction suffered by a worker is an injury only if the accident is**
47 **the dominant factor in causing the physical or mental condition or disability.**

48 **(7) The employee shall not be entitled to recover for the aggravation of a**
49 **preexisting condition, except to the extent that the work-related injury causes increased**
50 **permanent disability. Any award of compensation shall be reduced by the amount of**
51 **permanent partial disability determined to be preexisting disease or condition to cause or**
52 **prolong disability or need for treatment, the resultant condition is compensable only to the**
53 **extent that the compensable injury is and remains the dominant cause of the disability or**
54 **need for treatment.**

55 **(8) The terms "injury" and "personal injuries" shall mean violence to the physical**
56 **structure of the body and to the personal property which is used to make up the physical structure**
57 **of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other**
58 **prostheses which are placed in or on the body to replace the physical structure and such disease**
59 **or infection as naturally results therefrom. These terms shall in no case except as specifically**
60 **provided in this chapter be construed to include occupational disease in any form, nor shall they**
61 **be construed to include any contagious or infectious disease contracted during the course of the**
62 **employment, nor shall they include death due to natural causes occurring while the worker is at**
63 **work.**

64 **[4.] (9) "Death" when mentioned as a basis for the right to compensation means only**
65 **death resulting from such violence and its resultant effects occurring within three hundred weeks**
66 **after the accident; except that in cases of occupational disease, the limitation of three hundred**
67 **weeks shall not be applicable.**

68 **[5.] 4. Without otherwise affecting either the meaning or interpretation of the abridged**
69 **clause, "personal injuries arising out of and in the course of such employment", it is hereby**
70 **declared not to cover workers except while engaged in or about the premises where their duties**
71 **are being performed, or where their services require their presence as a part of such service.**

72 **[6.] 5. A person who is employed by the same employer for more than five and one-half**
73 **consecutive work days shall for the purpose of this chapter be considered an "employee".**

74 **[7.] 6. The term "total disability" as used in this chapter shall mean inability to return to**
75 **any employment and not merely mean inability to return to the employment in which the**
76 **employee was engaged at the time of the accident.**

77 **[8.] 7. As used in this chapter and all acts amendatory thereof, the term "commission"**
78 **shall hereafter be construed as meaning and referring exclusively to the labor and industrial**
79 **relations commission of Missouri, and the term "director" shall hereafter be construed as**
80 **meaning the director of the department of insurance of the state of Missouri or such agency of**
81 **government as shall exercise the powers and duties now conferred and imposed upon the**

82 department of insurance of the state of Missouri.

83 [9.] 8. The term "division" as used in this chapter means the division of workers'
84 compensation of the department of labor and industrial relations of the state of Missouri.

85 [10.] 9. For the purposes of this chapter, the term "minor" means a person who has not
86 attained the age of eighteen years; except that, for the purpose of computing the compensation
87 provided for in this chapter, the provisions of section 287.250 shall control.

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

9 2. An occupational disease is compensable **only** if [it is clearly work related and meets
10 the requirements of an injury which is compensable as provided in subsections 2 and 3 of section
11 287.020. An occupational disease is not compensable merely because work was a triggering or
12 precipitating factor] **the occupational exposure was the dominant factor in causing the**
13 **physical condition. In order to be compensable an occupational disease must meet the**
14 **applicable requirements of compensability for accidental injuries as set out in section**
15 **287.020.**

16 3. "Loss of hearing due to industrial noise" is recognized as an occupational disease for
17 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to
18 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of
19 producing occupational deafness.

20 4. "Radiation disability" is recognized as an occupational disease for purposes of this
21 chapter and is hereby defined to be that disability due to radioactive properties or substances or
22 to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the
23 use of or direct contact with radium or radioactive properties or substances or the use of or direct
24 exposure to Roentgen rays (X rays) or ionizing radiation.

25 5. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the
26 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases
27 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,
28 carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid fire department
29 if a direct causal relationship is established.

30 6. Any employee who is exposed to and contracts any contagious or communicable

31 disease arising out of and in the course of his or her employment shall be eligible for benefits
32 under this chapter as an occupational disease.

33 7. With regard to occupational disease due to repetitive motion, if the exposure to the
34 repetitive motion which is found to be the cause of the injury is for a period of less than three
35 months and the evidence demonstrates that the exposure to the repetitive motion with a prior
36 employer was the [substantial contributing] **dominant** factor [to] **in causing** the injury, the prior
37 employer shall be liable for such occupational disease.

38 **8. Notwithstanding the provisions of subsection 1 of section 287.260, any employer**
39 **who has paid benefits to the employee can sue the employee pursuant to any civil remedy**
40 **available upon the property, both real and personal, of the employee, to satisfy any**
41 **payments made by the employer to the employee under such circumstances.**