

SECOND REGULAR SESSION

HOUSE BILL NO. 1662

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CUNNINGHAM (86).

Read 1st time March 10, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4911L.011

AN ACT

To repeal sections 287.020, 287.067, and 287.800, 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Section A. Sections 287.020, 287.067, and 287.800, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, and 287.800, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the motor carrier and railroad safety division of the department of economic development or by the interstate commerce commission.

2. (1) The word "accident" as used in this chapter [shall, unless a different meaning is clearly indicated by the context, be construed to mean] **means** an unexpected [or unforeseen

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 proposed language.

16 identifiable event or series of events happening suddenly and violently, with or without human
17 fault, and] **traumatic event or unusual strain identifiable by time and place of occurrence**
18 producing at the time objective symptoms of an injury[. An injury is compensable if it is clearly
19 work related. An injury is clearly work related if work was a substantial factor in the cause of
20 the resulting medical condition or disability. An injury is not compensable merely because work
21 was a triggering or precipitating factor] **caused by a specific event during a single work shift.**

22 **(2) "Dominant factor" means the accident is the prevailing factor in relation to any**
23 **other factors contributing to the resulting medical condition.**

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

31 **(2) Missouri does not apply the positional risk analysis or positional risk doctrine.**
32 An injury shall be deemed to arise out of and in the course of the employment only if **all of the**
33 **following are met:**

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

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

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

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

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

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

46 **(5) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular**
47 **accident or myocardial infarction suffered by a worker is an injury only if the accident is**
48 **the dominant factor in causing the resulting medical condition.**

49 **(6) The employee shall not be entitled to recover for the aggravation of a**
50 **preexisting condition, except to the extent that the work-related injury causes increased**
51 **permanent disability. Any award of compensation shall be reduced by the amount of**

52 **permanent partial disability determined to be preexisting disease or condition to cause or**
53 **prolong disability or need for treatment, the resultant condition is compensable only to the**
54 **extent that the compensable injury is and remains the dominant cause of the need for**
55 **treatment.**

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

65 [4.] (8) "Death" when mentioned as a basis for the right to compensation means only
66 death resulting from such violence and its resultant effects occurring within three hundred weeks
67 after the accident; except that in cases of occupational disease, the limitation of three hundred
68 weeks shall not be applicable.

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

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

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

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

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

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

88 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 **resulting medical condition. Ordinary, gradual deterioration or progressive degeneration**
14 **of the body caused by aging shall not be compensable. "Dominant factor" as used in**
15 **relation to occupational disease means the occupational exposure is the prevailing factor**
16 **in relation to any other factors contributing to the resulting medical condition.**

17 3. **Missouri does not apply the positional risk analysis nor follow the positional risk**
18 **doctrine. An occupational disease injury shall be deemed to rise out of and in the course**
19 **of the employment only if all of the following are met:**

20 (a) **It is reasonably apparent upon consideration of all the circumstances that the**
21 **occupational disease is the dominant factor in causing the injury; and**

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

25 [3.] 4. "Loss of hearing due to industrial noise" is recognized as an occupational disease
26 for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due
27 to prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable
28 of producing occupational deafness.

29 [4.] 5. "Radiation disability" is recognized as an occupational disease for purposes of this
30 chapter and is hereby defined to be that disability due to radioactive properties or substances or
31 to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the
32 use of or direct contact with radium or radioactive properties or substances or the use of or direct
33 exposure to Roentgen rays (X rays) or ionizing radiation.

34 [5.] 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of
35 the heart or cardiovascular system, including carcinoma, may be recognized as occupational

36 diseases for the purposes of this chapter and are defined to be disability due to exposure to
37 smoke, gases, carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid
38 fire department if a direct causal relationship is established.

39 [6.] 7. Any employee who is exposed to and contracts any contagious or communicable
40 disease arising out of and in the course of his or her employment shall be eligible for benefits
41 under this chapter as an occupational disease.

42 [7.] 8. With regard to occupational disease due to repetitive motion, if the exposure to
43 the repetitive motion which is found to be the cause of the injury is for a period of less than three
44 months and the evidence demonstrates that the exposure to the repetitive motion with a prior
45 employer was the [substantial contributing] **dominant** factor [to] **in causing** the injury, the prior
46 employer shall be liable for such occupational disease.

287.800. All of the provisions of this chapter shall be [liberally] **impartially** construed
2 with a view to the public welfare[, and a substantial compliance therewith shall be sufficient to
3 give effect to rules, regulations, requirements, awards, orders or decisions of the division and the
4 commission, and they shall not be declared inoperative, illegal or void for any omission of a
5 technical nature in respect thereto]. **The labor and industrial relations commission and all
6 officials within the division of workers' compensation shall apply an impartial standard
7 of review when weighing evidence and resolving factual conflicts.**