

FIRST REGULAR SESSION

HOUSE BILL NO. 371

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FALLERT (Sponsor), WALSH, CORCORAN, GEORGE, SALVA,
DARROUGH, ZWEIFEL, KOMO, MEADOWS, WILDBERGER, SCHOEMEHL, YOUNG, FRAME,
LOWE (44) AND SPRENG (Co-sponsors).

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1016L.01I

AN ACT

To amend chapter 292, RSMo, by adding thereto one new section relating to workplace safety,
with penalty provisions.

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

Section A. Chapter 292, RSMo, is amended by adding thereto one new section, to be
2 known as section 292.005, to read as follows:

292.005. 1. As used in this section, the following terms shall mean:

- 2 **(1) "Agent of the employer", a manager having management authority or**
3 **enforcement powers with respect to a product, practice, or service; a corporate officer; or**
4 **a member of the board of directors;**
5 **(2) "Commission", the occupational safety standards commission created by this**
6 **section;**
7 **(3) "Director", the director of the department of labor and industrial relations or**
8 **the duly designated representative;**
9 **(4) "Department", the department of labor and industrial relations;**
10 **(5) "Employee", a person permitted to work by an employer in employment;**
11 **(6) "Employer", any individual or type of organization, including the state and all**
12 **its political subdivisions, that employs one or more individuals;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended
to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (7) "Safety order", a notice issued to employers by the director of labor for alleged
14 violations of this section, including any health and safety standards;

15 (8) "Serious bodily injury", bodily injury that creates a substantial risk of death
16 or causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or
17 protracted loss or impairment of the function of a bodily member or organ, or loss of a
18 fetus;

19 (9) "Standard", both health and safety standards;

20 (10) "Voluntary protection program", a program offered by the United States
21 Department of Labor, Occupational Safety and Health Administration to employers
22 subject to this section that exempts the employers from general scheduled inspections.

23 2. An "Occupational Safety Standards Commission" is created within the
24 department to promulgate, modify, or revoke safety and health standards in this state. The
25 commission shall be composed of nine members, which shall be selected as follows: three
26 members shall be selected by the president pro tem of the senate, three members shall be
27 selected by the speaker of the house of representatives, and three members shall be selected
28 by the governor.

29 3. Each employer shall establish and maintain conditions of work which are
30 reasonably safe and healthful for employees and free from recognized hazards that are
31 causing or are likely to cause death or serious bodily injury to employees.

32 4. Every employer or agent of the employer shall comply with the occupational
33 health and safety standards promulgated under this section, and under any direction in
34 such standards, keep the employees informed of their protections and obligations under
35 this section, the hazards of the work place and suitable precautions, relevant symptoms,
36 and emergency treatment for such hazards.

37 5. No person, employer, or agent of the employer may interfere with the use of any
38 method or process adopted for the protection of any employee in the employee's
39 employment or place of employment, or of any other person lawfully within the place of
40 employment, or fail to follow orders necessary to protect the life, health, and safety of
41 employees, and any other person lawfully within the place of employment.

42 6. Any standard promulgated under this section shall prescribe the use of labels or
43 other appropriate forms of warning, as are necessary, to insure that employees are
44 apprised of all hazards to which they are exposed, relevant symptoms and appropriate
45 emergency treatment, and proper conditions and precautions of safe use or exposure.
46 Where appropriate, such a standard shall also prescribe suitable protective equipment and
47 control or technological procedures to be used in connection with the hazards and shall
48 provide for monitoring or measuring employee exposure at such locations and intervals

49 and in such manner as may be necessary for the protection of employees. In addition,
50 where appropriate, any standard shall prescribe the type of frequency of medical
51 examinations or other tests which shall be made available by the employer, at the
52 employer's cost, to employees exposed to hazards in order to most effectively determine
53 whether the health of the employees is adversely affected by the exposure. Upon request,
54 the results of such examinations or tests shall be furnished to the department and shall
55 remain confidential within the department. At the request of the employee, results shall
56 be furnished to the employee's physician.

57 7. When promulgating standards dealing with toxic materials or harmful physical
58 agents, the commission shall:

59 (1) Set the standard which most adequately assures, to the extent feasible, on the
60 basis of the best available evidence, that no employee will suffer material impairment of
61 health or functional capacity even if the employee has regular exposure to the hazard dealt
62 with by the standard for the period of the employee's working life. Development of
63 standards shall be based upon research, demonstrations, experiments, and other such
64 information as may be appropriate. In addition to the attainment of the highest degree of
65 health and safety protection for the employee, other considerations shall be the latest
66 available scientific data in the field, the feasibility of the standards, and experience gained
67 under this and other health and safety laws. Whenever practicable, the standard
68 promulgated shall be expressed in terms of objective criteria and of the performance
69 desired;

70 (2) Adopt rules requiring employers to maintain accurate records of employee
71 exposures to potentially toxic material or harmful physical agents, which are required to
72 be monitored or measured under the standards. These rules shall provide employees, or
73 their representatives, with an opportunity to observe monitoring or measuring and to have
74 access to the records thereof. These rules shall also make appropriate provisions for each
75 employee's own exposure to toxic materials or harmful physical agents. Under these rules,
76 each employer or agent of the employer shall notify any employee who is being consistently
77 exposed to toxic materials or harmful physical agents in concentrations or at levels which
78 exceed those prescribed by an occupational safety and health standard and shall inform
79 any employee who is exposed to such toxic materials or harmful physical agents of the
80 corrective action being taken.

81 8. No person shall make a false statement, representation, or certification in any
82 application, record, report, plan, or other document required under this section.

83 9. No employer or agent of the employer shall destroy or negligently or
84 intentionally allow the destruction of documents concerning hazards to the public or the

85 employee's of the employer. Each document falsified or destroyed shall constitute a
86 separate offense.

87 **10. Whenever the director is of the opinion that imminent danger exists in any**
88 **workplace in this state, which condition can reasonably be expected to cause death or**
89 **serious bodily injury, the director, through the attorney general, may petition the circuit**
90 **court of the county in which such workplace is located for appropriate relief. Any order**
91 **issued under this subsection may require such steps to be taken as may be necessary to**
92 **avoid, correct, or remove such imminent danger and prohibit the employment or presence**
93 **of any individual in locations or under conditions where such imminent danger exists,**
94 **except individuals whose presence is necessary to avoid, correct, or remove such imminent**
95 **danger or maintain the capacity of a continuous process operation to resume normal**
96 **operations without a complete cessation of operations, or where a cessation of operations**
97 **is necessary, to permit such to be accomplished in a safe and orderly manner.**

98 **11. Whenever and as soon as an inspector concludes that conditions or practices**
99 **described in subsection 9 of this section exist in any place of employment, the inspector**
100 **shall inform the affected employers and employees of the danger and that the inspector is**
101 **recommending to the commissioner that relief be sought. If the director arbitrarily or**
102 **capriciously fails to seek relief under this section, any employee who may be injured by**
103 **reason of such failure, or the representative of such employees, may bring an action against**
104 **the director in the circuit court of the county in which the imminent danger is alleged to**
105 **exist or the employer has its principal office, for a writ of mandamus to compel the director**
106 **to seek such an order and for such further relief as may be appropriate.**

107 **12. An employee who is harmed by the failure of the employee's employer or an**
108 **agent of the employer to inform the employee of the responsibilities of the employer or**
109 **agent under subsection 3 of this section may file a civil action for relief. Except as provided**
110 **in this subsection, this section shall not be construed to supercede, or in any manner, affect**
111 **any worker's compensation or occupational diseases law, or any other statutory rights,**
112 **duties, or liabilities or create any private right of action.**

113 **13. Violations of this section result in the following penalties:**

114 **(1) A person who knowingly violates this section commits a class B misdemeanor,**
115 **except as otherwise provided;**

116 **(2) An employer or agent of the employer who causes serious bodily injury to an**
117 **employee as a result of a reckless violation of a rule adopted in this section commits a class**
118 **A misdemeanor;**

119 (3) An employer or agent of the employer who causes serious bodily injury to an
120 employee as a result of a knowing or intentional violation of a rule adopted under this
121 section commits a class A misdemeanor;

122 (4) An employer or agent of the employer who causes the death of an employee as
123 a result of a reckless violation of a rule adopted under this section commits a class D felony;

124 (5) An employer or agent of the employer who causes the death of an employee as
125 a result of a knowing or intentional violation of a rule adopted under this section commits
126 a class C felony.

127
128 Violations under subdivisions (2) to (5) of this subsection shall not apply to the state or a
129 political subdivision of the state.

130 14. The director shall promulgate rules to implement the provisions of this section.
131 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
132 created under the authority delegated in this section shall become effective only if it
133 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
134 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
135 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
136 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
137 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
138 adopted after August 28, 2007, shall be invalid and void.

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