

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 629
94TH GENERAL ASSEMBLY

Reported from the Committee on Special Committee on Workforce Development and Workplace Safety April 4, 2007 with recommendation that House Committee Substitute for House Bill No. 629 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1742L.04C

AN ACT

To repeal sections 287.020, 287.200, 287.220, and 287.230, RSMo, and to enact in lieu thereof five new sections relating to workers' compensation.

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

Section A. Section 287.020, 287.200, 287.220, and 287.230, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 287.020, 287.200, 287.220,
3 287.230, and 290.594, 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. **Except as otherwise provided in this chapter**, any reference to any
5 employee who has been injured shall, when the employee is dead, also include his dependents,
6 and other persons to whom compensation may be payable. The word "employee" shall also
7 include all minors who work for an employer, whether or not such minors are employed in
8 violation of law, and all such minors are hereby made of full age for all purposes under, in
9 connection with, or arising out of this chapter. The word "employee" shall not include an
10 individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and operator
11 of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier
12 operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or

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 operating under a certificate issued by the Missouri department of transportation or by the United
14 States Department of Transportation, or any of its subagencies.

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

19 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
20 out of and in the course of employment. An injury by accident is compensable only if the
21 accident was the prevailing factor in causing both the resulting medical condition and disability.
22 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
23 both the resulting medical condition and disability.

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

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

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

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

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

35 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
36 structure of the body and to the personal property which is used to make up the physical structure
37 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other
38 prostheses which are placed in or on the body to replace the physical structure and such disease
39 or infection as naturally results therefrom. These terms shall in no case except as specifically
40 provided in this chapter be construed to include occupational disease in any form, nor shall they
41 be construed to include any contagious or infectious disease contracted during the course of the
42 employment, nor shall they include death due to natural causes occurring while the worker is at
43 work.

44 4. "Death" when mentioned as a basis for the right to compensation means only death
45 resulting from such violence and its resultant effects occurring within three hundred weeks after
46 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
47 shall not be applicable.

48 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
49 occur while traveling from the employee's home to the employer's principal place of business or
50 from the employer's principal place of business to the employee's home are not compensable.
51 The extension of premises doctrine is abrogated to the extent it extends liability for accidents that
52 occur on property not owned or controlled by the employer even if the accident occurs on
53 customary, approved, permitted, usual or accepted routes used by the employee to get to and
54 from their place of employment.

55 6. The term "total disability" as used in this chapter shall mean inability to return to any
56 employment and not merely mean inability to return to the employment in which the employee
57 was engaged at the time of the accident.

58 7. As used in this chapter and all acts amendatory thereof, the term "commission" shall
59 hereafter be construed as meaning and referring exclusively to the labor and industrial relations
60 commission of Missouri, and the term "director" shall hereafter be construed as meaning the
61 director of the department of insurance of the state of Missouri or such agency of government
62 as shall exercise the powers and duties now conferred and imposed upon the department of
63 insurance of the state of Missouri.

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

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

69 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
70 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
71 "occupational disease", "arising out of", and "in the course of the employment" to include, but
72 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d
73 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and
74 *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,
75 or following those cases.

76 **11. In applying the provisions of this chapter, it is the intent of the legislature to**
77 **reject and abrogate *Schoemehl v. Treasurer of the State of Missouri*, 2007 WL 58370 (Mo.**
78 **banc 2007) and all cases interpreting, applying, or following this case.**

287.200. 1. Compensation for permanent total disability shall be paid during the
2 continuance of such disability for the lifetime of the employee at the weekly rate of
3 compensation in effect under this subsection on the date of the injury for which compensation
4 is being made. **Notwithstanding the provisions of subsection 1 of section 287.020, the**
5 **reference to the employee in this section refers only to the injured worker and shall not**

6 **include their dependents, estate, personal representative, or heirs, or any person to whom**
7 **compensation might otherwise be payable. The right to compensation for permanent total**
8 **disability of an injured employee shall not survive to any person and terminates on the date**
9 **of the injured employee's death in accordance with section 287.230.** The amount of such
10 compensation shall be computed as follows:

11 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
12 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
13 the injured employee's average weekly earnings during the year immediately preceding the
14 injury, as of the date of the injury; provided that the weekly compensation paid under this
15 subdivision shall not exceed an amount equal to seventy percent of the state average weekly
16 wage, as such wage is determined by the division of employment security, as of the July first
17 immediately preceding the date of injury;

18 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
19 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
20 the injured employee's average weekly earnings during the year immediately preceding the
21 injury, as of the date of the injury; provided that the weekly compensation paid under this
22 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly
23 wage, as such wage is determined by the division of employment security, as of the July first
24 immediately preceding the date of injury;

25 (3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991,
26 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the
27 injured employee's average weekly earnings as of the date of the injury; provided that the weekly
28 compensation paid under this subdivision shall not exceed an amount equal to one hundred
29 percent of the state average weekly wage;

30 (4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall
31 be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly
32 earnings as of the date of the injury; provided that the weekly compensation paid under this
33 subdivision shall not exceed an amount equal to one hundred five percent of the state average
34 weekly wage;

35 (5) For all injuries occurring on or after September 28, 1981, the weekly compensation
36 shall in no event be less than forty dollars per week.

37 2. All claims for permanent total disability shall be determined in accordance with the
38 facts. When an injured employee receives an award for permanent total disability but by the use
39 of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular
40 work or its equivalent, the life payment mentioned in subsection 1 of this section shall be
41 suspended during the time in which the employee is restored to his regular work or its equivalent.

42 The employer and the division shall keep the file open in the case during the lifetime of any
43 injured employee who has received an award of permanent total disability. In any case where
44 the life payment is suspended under this subsection, the commission may at reasonable times
45 review the case and either the employee or the employer may request an informal conference
46 with the commission relative to the resumption of the employee's weekly life payment in the
47 case.

287.220. 1. All cases of permanent disability where there has been previous disability
2 shall be compensated as herein provided. Compensation shall be computed on the basis of the
3 average earnings at the time of the last injury. If any employee who has a preexisting permanent
4 partial disability whether from compensable injury or otherwise, of such seriousness as to
5 constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee
6 becomes unemployed, and the preexisting permanent partial disability, if a body as a whole
7 injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only,
8 equals a minimum of fifteen percent permanent partial disability, according to the medical
9 standards that are used in determining such compensation, receives a subsequent compensable
10 injury resulting in additional permanent partial disability so that the degree or percentage of
11 disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole
12 injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial
13 disability, caused by the combined disabilities is substantially greater than that which would have
14 resulted from the last injury, considered alone and of itself, and if the employee is entitled to
15 receive compensation on the basis of the combined disabilities, the employer at the time of the
16 last injury shall be liable only for the degree or percentage of disability which would have
17 resulted from the last injury had there been no preexisting disability. After the compensation
18 liability of the employer for the last injury, considered alone, has been determined by an
19 administrative law judge or the commission, the degree or percentage of employee's disability
20 that is attributable to all injuries or conditions existing at the time the last injury was sustained
21 shall then be determined by that administrative law judge or by the commission and the degree
22 or percentage of disability which existed prior to the last injury plus the disability resulting from
23 the last injury, if any, considered alone, shall be deducted from the combined disability, and
24 compensation for the balance, if any, shall be paid out of a special fund known as the second
25 injury fund, hereinafter provided for. If the previous disability or disabilities, whether from
26 compensable injury or otherwise, and the last injury together result in total and permanent
27 disability, the minimum standards under this subsection for a body as a whole injury or a major
28 extremity injury shall not apply and the employer at the time of the last injury shall be liable only
29 for the disability resulting from the last injury considered alone and of itself; except that if the
30 compensation for which the employer at the time of the last injury is liable is less than the

31 compensation provided in this chapter for permanent total disability, then in addition to the
32 compensation for which the employer is liable and after the completion of payment of the
33 compensation by the employer, the employee shall be paid the remainder of the compensation
34 that would be due for permanent total disability under section 287.200 out of a special fund
35 known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section
36 provided and for special weekly benefits in rehabilitation cases as provided in section 287.141.
37 Maintenance of the second injury fund shall be as provided by section 287.710. The state
38 treasurer shall be the custodian of the second injury fund which shall be deposited the same as
39 are state funds and any interest accruing thereon shall be added thereto. The fund shall be
40 subject to audit the same as state funds and accounts and shall be protected by the general bond
41 given by the state treasurer. Upon the requisition of the director of the division of workers'
42 compensation, warrants on the state treasurer for the payment of all amounts payable for
43 compensation and benefits out of the second injury fund shall be issued.

44 2. In all cases in which a recovery against the second injury fund is sought for permanent
45 partial disability, permanent total disability, or death, the state treasurer as custodian thereof shall
46 be named as a party, and shall be entitled to defend against the claim. The state treasurer, with
47 the advice and consent of the attorney general of Missouri, may enter into compromise
48 settlements as contemplated by section 287.390, or agreed statements of fact that would affect
49 the second injury fund. All awards for permanent partial disability, permanent total disability,
50 or death affecting the second injury fund shall be subject to the provisions of this chapter
51 governing review and appeal. For all claims filed against the second injury fund on or after July
52 1, 1994, the attorney general shall use assistant attorneys general except in circumstances where
53 an actual or potential conflict of interest exists, to provide legal services as may be required in
54 all claims made for recovery against the fund. Any legal expenses incurred by the attorney
55 general's office in the handling of such claims, including, but not limited to, medical examination
56 fees, expert witness fees, court reporter expenses, travel costs, and related legal expenses shall
57 be paid by the fund. Effective July 1, 1993, the payment of such legal expenses shall be
58 contingent upon annual appropriations made by the general assembly, from the fund, to the
59 attorney general's office for this specific purpose.

60 3. If more than one injury in the same employment causes concurrent temporary
61 disabilities, compensation shall be payable only for the longest and largest paying disability.

62 4. If more than one injury in the same employment causes concurrent and consecutive
63 permanent partial disability, compensation payments for each subsequent disability shall not
64 begin until the end of the compensation period of the prior disability.

65 5. If an employer fails to insure or self-insure as required in section 287.280, funds from
66 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses

67 to cure and relieve the effects of the injury or disability of an injured employee in the employ of
68 an uninsured employer, or in the case of death of an employee in the employ of an uninsured
69 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and
70 necessary expenses in the manner required in sections 287.240 and 287.241. In defense of
71 claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the
72 second injury fund, shall have the same defenses to such claims as would the uninsured
73 employer. Any funds received by the employee or the employee's dependents, through civil or
74 other action, must go towards reimbursement of the second injury fund, for all payments made
75 to the employee, the employee's dependents, or paid on the employee's behalf, from the second
76 injury fund pursuant to this subsection. The office of the attorney general of the state of Missouri
77 shall bring suit in the circuit court of the county in which the accident occurred against any
78 employer not covered by this chapter as required in section 287.280.

79 6. Every three years the second injury fund shall have an actuarial study made to
80 determine the solvency of the fund, appropriate funding level of the fund, and forecasted
81 expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988.
82 The expenses of such actuarial studies shall be paid out of the fund for the support of the division
83 of workers' compensation.

84 7. The director of the division of workers' compensation shall maintain the financial data
85 and records concerning the fund for the support of the division of workers' compensation and the
86 second injury fund. The division shall also compile and report data on claims made pursuant to
87 subsection 9 of this section. The attorney general shall provide all necessary information to the
88 division for this purpose.

89 8. All claims for fees and expenses filed against the second injury fund and all records
90 pertaining thereto shall be open to the public.

91 9. Any employee who at the time a compensable work-related injury is sustained is
92 employed by more than one employer, the employer for whom the employee was working when
93 the injury was sustained shall be responsible for wage loss benefits applicable only to the
94 earnings in that employer's employment and the injured employee shall be entitled to file a claim
95 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
96 from the employment or employments where the injury did not occur, up to the maximum
97 weekly benefit less those benefits paid by the employer in whose employment the employee
98 sustained the injury. The employee shall be entitled to a total benefit based on the total average
99 weekly wage of such employee computed according to subsection 8 of section 287.250. The
100 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
101 of the injury. The employer for whom the employee was working where the injury was sustained
102 shall be responsible for all medical costs incurred in regard to that injury.

103 **10. No person shall be eligible to receive benefits from the second injury fund for**
104 **injuries occurring on or after January 1, 2008. The division shall compute moneys to**
105 **persons eligible for such award for injuries occurring before January 1, 2008, and assess**
106 **employers. Any remaining funds after all awards have been satisfied shall lapse into the**
107 **workers' compensation fund.**

108 **11. The division shall promulgate rules to implement the provisions of this section.**
109 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**
110 **created under the authority delegated in this section shall become effective only if it**
111 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
112 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
113 **and if any of the powers vested with the general assembly under chapter 536, RSMo, to**
114 **review, to delay the effective date, or to disapprove and annul a rule are subsequently held**
115 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
116 **after August 28, 2007, shall be invalid and void.**

287.230. 1. The death of the injured employee shall not affect the liability of the
2 employer to furnish compensation as in this chapter provided, so far as the liability has accrued
3 and become payable at the time of the death, and any accrued and unpaid compensation due the
4 employee shall be paid to his dependents without administration, or if there are no dependents,
5 to his personal representative or other persons entitled thereto, but the death shall be deemed to
6 be the termination of the disability.

2. Where an employee is entitled to compensation under this chapter for an injury
8 received and death ensues for any cause not resulting from the injury for which he was entitled
9 to compensation, payments of the unpaid accrued compensation shall be paid, but payments of
10 the unpaid unaccrued balance for the injury shall cease and all liability therefor shall terminate
11 [unless there are surviving dependents at the time of death].

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

2 **(1) "Employer", includes the state or any political or civil subdivision thereof, any**
3 **person, partnership, association, or corporation employing six or more persons within the**
4 **state, but does not include individual persons;**

5 **(2) "Proper authorities", public authorities or authorities of the employer,**
6 **excluding any individual who engaged in the reported illegal conduct.**

2. Employees who are not employed under a contract containing a statement of
8 duration shall be employed at-will and may be discharged at any time, with or without
9 cause, subject to contrary statutory provisions and the exceptions provided in subsections
10 3 and 4 of this section. Any cause of action for whistle-blowing or refusal to commit an
11 illegal act that previously existed in common law is hereby abrogated.

12 **3. Employees shall not be deemed employed at-will and shall not be subject to**
13 **discharge when the elements of a whistle-blower cause of action for wrongful discharge are**
14 **established. A whistle-blower cause of action for wrongful discharge is established if an**
15 **employee proves by a preponderance of the evidence that:**

16 **(1) The employee reported to proper authorities serious misconduct that the**
17 **employee had a good faith reasonable belief had or would occur that constitutes a violation**
18 **of the law and well-established and clearly mandated public policy as expressed in a**
19 **statute, constitutional provision, or regulation;**

20 **(2) The employee was discharged; and**

21 **(3) The discharge was exclusively caused by the employee's report to the proper**
22 **authorities.**

23 **4. Employees shall not be deemed employed at-will and shall not be subject to**
24 **discharge when the elements of a refusal to commit an illegal act cause of action for**
25 **wrongful discharge are established. A refusal to commit an illegal act cause of action for**
26 **wrongful discharge is established if an employee proves by a preponderance of the**
27 **evidence that:**

28 **(1) The employer directed the employee to perform conduct that the employee had**
29 **a good faith and reasonable belief that, if completed, would violate the law and well-**
30 **established and clearly mandated public policy as expressed in a statute, constitutional**
31 **provision, or regulation;**

32 **(2) The employee specifically refused the directive to perform the unlawful act;**

33 **(3) The employee was discharged; and**

34 **(4) The discharge was exclusively caused by the employee's refusal to perform the**
35 **unlawful act.**

36 **5. No cause of action shall exist under subsections 3 or 4 of this section if the**
37 **employee has available an alternative state or federal statutory or regulatory remedy.**

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