

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1883
94TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, May 12, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4667S.04C

AN ACT

To repeal sections 287.020, 287.200, 287.230, 290.505, and 320.336, RSMo, and to enact in lieu thereof seven new sections relating to employment, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 287.020, 287.200, 287.230, 290.505, and 320.336, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 285.035, 287.020, 287.200, 287.230, 290.505, 290.523, and 320.336, to read as follows:

285.035. 1. No employer shall require an employee to have personal identification microchip technology implanted into an employee for any reason.

2. For purposes of this section, "personal identification microchip technology" means a subcutaneous or surgically implanted microchip technology device or product that contains or is designed to contain a unique identification number and personal information that can be non-invasively retrieved or transmitted with an external scanning device.

3. Any employer who violates this section is guilty of a class A misdemeanor.

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

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

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
6 has been injured shall, when the employee is dead, also include his dependents,
7 and other persons to whom compensation may be payable. The word "employee"
8 shall also include all minors who work for an employer, whether or not such
9 minors are employed in violation of law, and all such minors are hereby made of
10 full age for all purposes under, in connection with, or arising out of this
11 chapter. The word "employee" shall not include an individual who is the owner,
12 as defined in subsection 43 of section 301.010, RSMo, and operator of a motor
13 vehicle which is leased or contracted with a driver to a for-hire motor carrier
14 operating within a commercial zone as defined in section 390.020 or 390.041,
15 RSMo, or operating under a certificate issued by the Missouri department of
16 transportation or by the United States Department of Transportation, or any of
17 its subagencies.

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

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

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

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

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

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

38 (4) A cardiovascular, pulmonary, respiratory, or other disease, or
39 cerebrovascular accident or myocardial infarction suffered by a worker is an

40 injury only if the accident is the prevailing factor in causing the resulting medical
41 condition.

42 (5) The terms "injury" and "personal injuries" shall mean violence to the
43 physical structure of the body and to the personal property which is used to make
44 up the physical structure of the body, such as artificial dentures, artificial limbs,
45 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
46 to replace the physical structure and such disease or infection as naturally results
47 therefrom. These terms shall in no case except as specifically provided in this
48 chapter be construed to include occupational disease in any form, nor shall they
49 be construed to include any contagious or infectious disease contracted during the
50 course of the employment, nor shall they include death due to natural causes
51 occurring while 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 of the state of Missouri or such agency of government as shall
72 exercise the powers and duties now conferred and imposed upon the department
73 of insurance of the state of Missouri.

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

76 state of Missouri.

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

81 10. In applying the provisions of this chapter, it is the intent of the
82 legislature to reject and abrogate earlier case law interpretations on the meaning
83 of or definition of "accident", "occupational disease", "arising out of", and "in the
84 course of the employment" to include, but not be limited to, holdings in: Bennett
85 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);
86 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,
87 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
88 following those cases.

 287.200. 1. Compensation for permanent total disability shall be paid
2 during the continuance of such disability for the lifetime of the employee at the
3 weekly rate of compensation in effect under this subsection on the date of the
4 injury for which compensation is being made. **The word "employee" as used**
5 **in this section shall not include the injured worker's dependents,**
6 **estate, or other persons to whom compensation may be payable as**
7 **provided in subsection 1 of section 287.020.** The amount of such
8 compensation shall be computed as follows:

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

17 (2) For all injuries occurring on or after September 28, 1986, but before
18 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six
19 and two-thirds percent of the injured employee's average weekly earnings during
20 the year immediately preceding the injury, as of the date of the injury; provided
21 that the weekly compensation paid under this subdivision shall not exceed an
22 amount equal to seventy-five percent of the state average weekly wage, as such
23 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
26 August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
27 and two-thirds percent of the injured employee's average weekly earnings as of
28 the date of the injury; provided that the weekly compensation paid under this
29 subdivision shall not exceed an amount equal to one hundred percent of the state
30 average weekly wage;

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

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

38 **2. Permanent total disability benefits that have accrued through**
39 **the date of the injured employee's death are the only permanent total**
40 **disability benefits that are to be paid in accordance with section**
41 **287.230. The right to unaccrued compensation for permanent total**
42 **disability of an injured employee terminates on the date of the injured**
43 **employee's death in accordance with section 287.230, and does not**
44 **survive to the injured employee's dependents, estate, or other persons**
45 **to whom compensation might otherwise be payable.**

46 **3.** All claims for permanent total disability shall be determined in
47 accordance with the facts. When an injured employee receives an award for
48 permanent total disability but by the use of glasses, prosthetic appliances, or
49 physical rehabilitation the employee is restored to his regular work or its
50 equivalent, the life payment mentioned in subsection 1 of this section shall be
51 suspended during the time in which the employee is restored to his regular work
52 or its equivalent. The employer and the division shall keep the file open in the
53 case during the lifetime of any injured employee who has received an award of
54 permanent total disability. In any case where the life payment is suspended
55 under this subsection, the commission may at reasonable times review the case
56 and either the employee or the employer may request an informal conference with
57 the commission relative to the resumption of the employee's weekly life payment
58 in the case.

287.230. 1. The death of the injured employee shall not affect the liability

2 of the employer to furnish compensation as in this chapter provided, so far as the
3 liability has accrued and become payable at the time of the death, and any
4 accrued and unpaid compensation due the employee shall be paid to his
5 dependents without administration, or if there are no dependents, to his personal
6 representative or other persons entitled thereto, but the death shall be deemed
7 to be the termination of the disability.

8 2. Where an employee is entitled to compensation under this chapter,
9 **exclusive of compensation as provided for in section 287.200**, for an
10 injury received and death ensues for any cause not resulting from the injury for
11 which [he] **the employee** was entitled to compensation, [payments of the unpaid
12 accrued compensation shall be paid, but] payments of the unpaid unaccrued
13 [balance] **compensation under section 287.190 and no other**
14 **compensation** for the injury shall [cease and all liability therefor shall
15 terminate unless there are] **be paid to the** surviving dependents at the time of
16 death.

17 **3. In applying the provisions of this chapter, it is the intent of**
18 **the legislature to reject and abrogate the holding in Schoemehl v.**
19 **Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. 2007), and all**
20 **cases citing, interpreting, applying, or following this case.**

290.505. 1. No employer shall employ any of his employees for a
2 workweek longer than forty hours unless such employee receives compensation
3 for his employment in excess of the hours above specified at a rate not less than
4 one and one-half times the regular rate at which he is employed.

5 2. Employees of an amusement or recreation business that meets the
6 criteria set out in 29 U.S.C. 213(a) (3) must be paid one and one-half times their
7 regular compensation for any hours worked in excess of fifty-two hours in any
8 one-week period.

9 3. With the exception of employees described in subsection (2), the
10 overtime requirements of subsection (1) shall not apply to employees who are
11 exempt from federal minimum wage or overtime requirements [pursuant to 29
12 U.S.C. §§ 213(a)-(b)] **including, but not limited to, the exemptions or hour**
13 **calculation formulas specified in 29 U.S.C. Sections 207 and 213, and**
14 **any regulations promulgated thereunder.**

15 **4. Except as may be otherwise provided under sections 290.500**
16 **to 290.530, this section shall be interpreted in accordance with the Fair**
17 **Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended, and the**

18 **Portal to Portal Act, 29 U.S.C. Section 251, et seq., as amended, and any**
19 **regulations promulgated thereunder.**

290.523. The department may, in accordance with chapter 536, RSMo, promulgate such rules and regulations as are necessary for the enforcement and administration of sections 290.500 to 290.530. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annual a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

320.336. 1. No public or private employer shall terminate an employee for joining any fire department or fire protection district, including but not limited to any municipal, volunteer, rural, or subscription fire department or organization[, a] **or any** volunteer fire protection association, as a volunteer firefighter, **or the** Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, or Urban Search and Rescue Team, **or being activated to a national disaster response by the Federal Emergency Management Agency (FEMA).**

2. No public or private employer shall terminate an employee who is a volunteer firefighter, a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, or Urban Search and Rescue Team because the employee, when acting as a volunteer firefighter, **or as** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, [or] Urban Search and Rescue Team, **or FEMA** is absent from or late to his or her employment in order to respond to an emergency before the time the employee is to report to his or her place of employment.

3. An employer may charge against the employee's regular pay any **employment** time [that] **lost by** an employee who is a volunteer firefighter, **or** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, [or] Urban Search and Rescue Team [loses from employment], **or FEMA** because of the employee's response to an emergency in the course of performing

22 his or her duties as a volunteer firefighter, **or** a member of Missouri-1 Disaster
23 Medical Assistance Team, Missouri Task Force One, [or] Urban Search and
24 Rescue Team, **or FEMA**.

25 4. In the case of an employee who is a volunteer firefighter, **or** a member
26 of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, [or]
27 Urban Search and Rescue Team, **or FEMA** and who loses time from his or her
28 employment in order to respond to an emergency in the course of performing his
29 or her duties as a volunteer firefighter, **or** a member of Missouri-1 Disaster
30 Medical Assistance Team, Missouri Task Force One, [or] Urban Search and
31 Rescue Team, **or FEMA**, the employer has the right to request the employee to
32 provide the employer with a written statement from the supervisor or acting
33 supervisor of the volunteer fire department or the commander of Missouri-1
34 Disaster Medical Assistance Team **or the FEMA supervisor** stating that the
35 employee responded to an emergency and stating the time and date of the
36 emergency.

37 5. An employee who is a volunteer firefighter, or a member of Missouri-1
38 Disaster Medical Assistance Team, Missouri Task Force One, [or] Urban Search
39 and Rescue Team, **or FEMA** and who may be absent from or late to his or her
40 employment in order to respond to an emergency in the course of performing his
41 or her duties as a volunteer firefighter, or a member of Missouri-1 Disaster
42 Medical Assistance Team, Missouri Task Force One, [or] Urban Search and
43 Rescue Team, **or FEMA** shall make a reasonable effort to notify his or her
44 employer that he or she may be absent or late.

Section B. Because of the need to clarify workers' compensation laws and
2 preserve the solvency of the workers' compensation system, the repeal and
3 reenactment of sections 287.020, 287.200, and 287.230 of this act is deemed
4 necessary for the immediate preservation of the public health, welfare, peace and
5 safety, and is hereby declared to be an emergency act within the meaning of the
6 constitution, and the repeal and reenactment of sections 287.020, 287.200, and
7 287.230 of this act shall be in full force and effect upon its passage and approval.

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