

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1883
94TH GENERAL ASSEMBLY

4667S.04T

2008

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
2 repealed and seven new sections enacted in lieu thereof, to be known as sections 285.035,
3 287.020, 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
2 microchip technology implanted into an employee for any reason.**

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

7 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
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 section 287.200,** any reference to
5 any employee who has been injured shall, when the employee is dead, also include his
6 dependents, and other persons to whom compensation may be payable. The word "employee"

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.

7 shall also include all minors who work for an employer, whether or not such minors are
8 employed in violation of law, and all such minors are hereby made of full age for all purposes
9 under, in connection with, or arising out of this chapter. The word "employee" shall not include
10 an individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and
11 operator 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
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.

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. **The word "employee" as used in this section shall not include the injured**
5 **worker's dependents, estate, or other persons to whom compensation may be payable as**
6 **provided in subsection 1 of section 287.020.** The amount of such compensation shall be
7 computed as follows:

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

15 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
16 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
17 the injured employee's average weekly earnings during the year immediately preceding the
18 injury, as of the date of the injury; provided that the weekly compensation paid under this
19 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly
20 wage, as such wage is determined by the division of employment security, as of the July first
21 immediately preceding the date of injury;

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

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

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

34 2. **Permanent total disability benefits that have accrued through the date of the**
35 **injured employee's death are the only permanent total disability benefits that are to be**
36 **paid in accordance with section 287.230. The right to unaccrued compensation for**
37 **permanent total disability of an injured employee terminates on the date of the injured**
38 **employee's death in accordance with section 287.230, and does not survive to the injured**

39 **employee's dependents, estate, or other persons to whom compensation might otherwise**
40 **be payable.**

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

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.

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

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

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

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

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

13 4. Except as may be otherwise provided under sections 290.500 to 290.530, this
14 section shall be interpreted in accordance with the Fair Labor Standards Act, 29 U.S.C.
15 Section 201, et seq., as amended, and the Portal to Portal Act, 29 U.S.C. Section 251, et seq.,
16 as amended, and any regulations promulgated thereunder.

290.523. The department may, in accordance with chapter 536, RSMo, promulgate
2 such rules and regulations as are necessary for the enforcement and administration of
3 sections 290.500 to 290.530. Any rule or portion of a rule, as that term is defined in section
4 536.010, RSMo, that is created under the authority delegated in this section shall become
5 effective only if it complies with and is subject to all of the provisions of chapter 536,
6 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
7 nonseverable and if any of the powers vested with the general assembly pursuant to
8 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annual a
9 rule are subsequently held unconstitutional, then the grant of rulemaking authority and
10 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
2 fire department or fire protection district, including but not limited to any municipal, volunteer,
3 rural, or subscription fire department or organization[, a] **or any** volunteer fire protection
4 association, as a volunteer firefighter, **or the** Missouri-1 Disaster Medical Assistance Team,
5 Missouri Task Force One, or Urban Search and Rescue Team, **or being activated to a national**
6 **disaster response by the Federal Emergency Management Agency (FEMA).**

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

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

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

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

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

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

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