

Summary of Missouri Senate Bill 66 - effective August 28, 2017

By Chris Archer, Archer, Lassa and McHugh LLC

- 40% shareholders in an S-Corporation now will have the option of rejecting coverage under the Act.
- MMI is now defined with the corresponding defined obligation for TTD and/or TPD benefits. Prior statute would allow for an argument that an injured worker could compete for a job in the open labor market. Never successful, this change defines the existing practical law that has been applied.

Chris' Take: Nothing new here. This change actually eliminates an argument that a Claimant who sustains a serious injury that will obviously preclude him/her from RTW in his/her regular occupation could compete for job in open labor market even before being placed at MMI.

- No TPD nor TTD is owed if a light duty position was tendered and the Claimant voluntarily separates from the employment. Recent cases had suggested that even if light duty tendered, and the Claimant quits, TTD would be owed as the Claimant was "disabled" as defined in the statute as "an inability to compete for a job in the open labor market." (Recall that a Claimant who is terminated from employment due to post-injury misconduct is similarly disqualified from TTD or TPD)

Chris' Take: Effective reform. Increasingly the ALJs and Commission had awarded TTD to be paid or PTD awarded despite evidence that the Claimant was tendered light duty and simply refused the light duty. Question remains if the Claimant is provided permanent accommodation, whether the Commission would award PTD benefits in any case after MMI is reached.

- SB 66 eliminates "partial" dependents from being entitled to death benefits in the event no total dependents are eligible.

Chris' Take: Very limited application effecting a very low percentage of cases. Case law had provided a very low burden of proof of "partial dependency" such as help with rent or similar support normally to a parent or other relative.

- SB 66 creates rebuttable presumption that an accident was sustained "in conjunction with" an illegal or nonprescribed drug if drug test was positive and was taken within 24 hours of the accident or injury. Notice of the positive test must be provided the Claimant within 14 days and Claimant must be provided opportunity for second test. Result must

be confirmed by mass spectrometry using generally accepted medical and forensic testing procedures. Statute provides for 50% penalty on all forms of compensation for positive drug test.

Chris' Take: A court opinion had provided for this presumption already. This new provision does mimic this decision, but creates a more difficult process and challenges as the sample needs to be retained, chain of custody proven, and mass spectrometry used. Most hospital emergency room testing will not qualify and a separate vendor will need to be used for post-accident drug testing.

- Claimant must prove that his/her pursuit of worker's compensation benefits was the motivating factor in his/her discharge or alleged discrimination to be entitled to civil remedy.

Chris' Take: Unlikely to impact the practice. The question is whether the suits will be dismissed based upon summary judgment and this is unlikely to be the case with this new provision. The cases are still likely to be submitted for jury to consider circumstances around the job action and the worker's compensation case.

- Changes made to beneficiaries entitled to compensation under the "Line of Duty" Act.
- Changes to qualification for self-insured trusts to prove solvency.
- SB 66 attempted to hasten a Claimant to get his/her own rating opinion by providing a twelve-month deadline to get such an opinion. The deadline however can be waived and only deals with settlements not hearings- suggesting ratings later obtained may still be submitted for a hearing.

Chris' Take: Totally ineffective for its intended and laudable motive in hastening litigation.