

SECOND REGULAR SESSION

# HOUSE BILL NO. 1243

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BANGERT.

4334H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 287.067 and 287.120, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation.

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

Section A. Sections 287.067 and 287.120, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.067 and 287.120, to read as follows:

287.067. 1. **(1)** In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

**(2) For purposes of this section, "emergency worker" means any air ambulance pilot, air ambulance registered professional nurse, emergency medical technician, firefighter, or law enforcement officer, as those terms are defined in section 287.243.**

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

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.

18           3. An injury due to repetitive motion is recognized as an occupational disease for  
19 purposes of this chapter. An occupational disease due to repetitive motion is compensable only  
20 if the occupational exposure was the prevailing factor in causing both the resulting medical  
21 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation  
22 to any other factor, causing both the resulting medical condition and disability. Ordinary,  
23 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal  
24 activities of day-to-day living shall not be compensable.

25           4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for  
26 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to  
27 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of  
28 producing occupational deafness.

29           5. "Radiation disability" is recognized as an occupational disease for purposes of this  
30 chapter and is hereby defined to be that disability due to radioactive properties or substances or  
31 to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the  
32 use of or direct contact with radium or radioactive properties or substances or the use of or direct  
33 exposure to Roentgen rays (X-rays) or ionizing radiation.

34           6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the  
35 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases  
36 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,  
37 carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police  
38 officers of a paid police department certified under chapter 590 if a direct causal relationship is  
39 established, or psychological stress of firefighters of a paid fire department or paid peace officers  
40 of a police department who are certified under chapter 590 if a direct causal relationship is  
41 established.

42           7. Any employee who is exposed to and contracts any contagious or communicable  
43 disease arising out of and in the course of his or her employment shall be eligible for benefits  
44 under this chapter as an occupational disease.

45           8. With regard to occupational disease due to repetitive motion, if the exposure to the  
46 repetitive motion which is found to be the cause of the injury is for a period of less than three  
47 months and the evidence demonstrates that the exposure to the repetitive motion with the  
48 immediate prior employer was the prevailing factor in causing the injury, the prior employer  
49 shall be liable for such occupational disease.

50           **9. (1) Post-traumatic stress disorder diagnosed in an emergency worker by a**  
51 **psychiatrist or psychologist during the course of service as an emergency worker or within**  
52 **three years of the last active date of service as an emergency worker shall be presumed an**  
53 **occupational disease compensable under the requirements of subsections 1 and 2 of this**

54 **section unless it is shown by a preponderance of the evidence that nonservice-connected**  
55 **risk factors or nonservice-connected exposure caused the post-traumatic stress disorder.**

56 **(2) For purposes of this subsection, "nonservice-connected" means not connected**  
57 **to service as an emergency worker.**

58 **(3) This subsection shall apply only to claims arising on or after August 28, 2018.**

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,  
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for  
3 personal injury or death of the employee by accident or occupational disease arising out of and  
4 in the course of the employee's employment. Any employee of such employer shall not be liable  
5 for any injury or death for which compensation is recoverable under this chapter and every  
6 employer and employees of such employer shall be released from all other liability whatsoever,  
7 whether to the employee or any other person, except that an employee shall not be released from  
8 liability for injury or death if the employee engaged in an affirmative negligent act that  
9 purposefully and dangerously caused or increased the risk of injury. The term "accident" as used  
10 in this section shall include, but not be limited to, injury or death of the employee caused by the  
11 unprovoked violence or assault against the employee by any person.

12 2. The rights and remedies herein granted to an employee shall exclude all other rights  
13 and remedies of the employee, the employee's spouse, parents, personal representatives,  
14 dependents, heirs or next kin, at common law or otherwise, on account of such injury or death  
15 by accident or occupational disease, except such rights and remedies as are not provided for by  
16 this chapter.

17 3. No compensation shall be allowed under this chapter for the injury or death due to the  
18 employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted  
19 injury shall be on the employer or the person contesting the claim for allowance.

20 4. Where the injury is caused by the failure of the employer to comply with any statute  
21 in this state or any lawful order of the division or the commission, the compensation and death  
22 benefit provided for under this chapter shall be increased fifteen percent.

23 5. Where the injury is caused by the failure of the employee to use safety devices where  
24 provided by the employer, or from the employee's failure to obey any reasonable rule adopted  
25 by the employer for the safety of employees, the compensation and death benefit provided for  
26 herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is  
27 shown that the employee had actual knowledge of the rule so adopted by the employer; and  
28 provided, further, that the employer had, prior to the injury, made a reasonable effort to cause  
29 his or her employees to use the safety device or devices and to obey or follow the rule so adopted  
30 for the safety of the employees.

31           6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
32 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the  
33 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent  
34 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled  
35 drugs.

36           (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the  
37 employer's rule or policy is the proximate cause of the injury, then the benefits or compensation  
38 otherwise payable under this chapter for death or disability shall be forfeited.

39           (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under  
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the  
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A  
42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's  
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section  
44 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter  
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled  
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

47           (4) Any positive test result for a nonprescribed controlled drug or the metabolites of such  
48 drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a  
49 preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's  
50 system at the time of the accident or injury and that the injury was sustained in conjunction with  
51 the use of the tested nonprescribed controlled drug if:

52           (a) The initial testing was administered within twenty-four hours of the accident or  
53 injury;

54           (b) Notice was given to the employee of the test results within fourteen calendar days  
55 of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

56           (c) The employee was given an opportunity to perform a second test upon the original  
57 sample; and

58           (d) The initial or any subsequent testing that forms the basis of the presumption was  
59 confirmed by mass spectrometry using generally accepted medical or forensic testing procedures.

60           7. Where the employee's participation in a recreational activity or program is the  
61 prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for  
62 death or disability shall be forfeited regardless that the employer may have promoted, sponsored  
63 or supported the recreational activity or program, expressly or impliedly, in whole or in part. The  
64 forfeiture of benefits or compensation shall not apply when:

65           (1) The employee was directly ordered by the employer to participate in such recreational  
66 activity or program;

67 (2) The employee was paid wages or travel expenses while participating in such  
68 recreational activity or program; or

69 (3) The injury from such recreational activity or program occurs on the employer's  
70 premises due to an unsafe condition and the employer had actual knowledge of the employee's  
71 participation in the recreational activity or program and of the unsafe condition of the premises  
72 and failed to either curtail the recreational activity or program or cure the unsafe condition.

73 8. Mental injury resulting from work-related stress does not arise out of and in the course  
74 of the employment, unless it is demonstrated that the stress is work related and was extraordinary  
75 and unusual. The amount of work stress shall be measured by objective standards and actual  
76 events.

77 9. A mental injury is not considered to arise out of and in the course of the employment  
78 if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion,  
79 termination or any similar action taken in good faith by the employer.

80 10. The ability of a firefighter to receive benefits for psychological stress under section  
81 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

82 **11. The ability of an emergency worker to receive benefits for post-traumatic stress**  
83 **disorder under section 287.067 shall not be diminished by the provisions of subsections 8**  
84 **and 9 of this section.**

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