

SECOND REGULAR SESSION

# HOUSE BILL NO. 2325

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TRENT.

5180H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 287.020, 287.140, and 287.270, RSMo, and to enact in lieu thereof three 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Section A. Sections 287.020, 287.140, and 287.270, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.020, 287.140, and 287.270, to read as follows:

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 any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.

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.

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

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

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

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

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

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

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

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

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

50           5. Injuries sustained in company-owned or subsidized automobiles in accidents that  
51 occur while traveling from the employee's home to the employer's principal place of business or  
52 from the employer's principal place of business to the employee's home are not compensable.

53 The extension of premises doctrine is abrogated to the extent it extends liability for accidents that  
54 occur on property not owned [~~or controlled~~] by the employer even if the accident occurs on  
55 customary, approved, permitted, usual or accepted routes used by the employee to get to and  
56 from their place of employment.

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

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

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

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

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

78 11. For the purposes of this chapter, "occupational diseases due to toxic exposure" shall  
79 only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis,  
80 bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia,  
81 and myelodysplastic syndrome.

82 12. For the purposes of this chapter, "maximum medical improvement" shall mean the  
83 point at which the injured employee's medical condition has stabilized and can no longer  
84 reasonably improve with additional medical care, as determined within a reasonable degree of  
85 medical certainty.

287.140. 1. In addition to all other compensation paid to the employee under this  
2 section, the employee shall receive and the employer shall provide such medical, surgical,  
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as

4 may reasonably be required after the injury or disability, to cure and relieve from the effects of  
5 [the] injury. **The accident of occupational disease must be the prevailing factor in causing**  
6 **the injury and medical condition and the prevailing factor in the need for treatment.** If the  
7 employee desires, he shall have the right to select his own physician, surgeon, or other such  
8 requirement at his own expense. Where the requirements are furnished by a public hospital or  
9 other institution, payment therefor shall be made to the proper authorities. Regardless of whether  
10 the health care provider is selected by the employer or is selected by the employee at the  
11 employee's expense, the health care provider shall have the affirmative duty to communicate  
12 fully with the employee regarding the nature of the employee's injury and recommended  
13 treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such  
14 duty to communicate shall constitute a disciplinary violation by the provider subject to the  
15 provisions of chapter 620. When an employee is required to submit to medical examinations or  
16 necessary medical treatment at a place outside of the local or metropolitan area from the  
17 employee's principal place of employment, the employer or its insurer shall advance or reimburse  
18 the employee for all necessary and reasonable expenses; except that an injured employee who  
19 resides outside the state of Missouri and who is employed by an employer located in Missouri  
20 shall have the option of selecting the location of services provided in this section either at a  
21 location within one hundred miles of the injured employee's residence, place of injury or place  
22 of hire by the employer. The choice of provider within the location selected shall continue to be  
23 made by the employer. In case of a medical examination if a dispute arises as to what expenses  
24 shall be paid by the employer, the matter shall be presented to the legal advisor, the  
25 administrative law judge or the commission, who shall set the sum to be paid and same shall be  
26 paid by the employer prior to the medical examination. In no event, however, shall the employer  
27 or its insurer be required to pay transportation costs for a greater distance than two hundred fifty  
28 miles each way from place of treatment.

29         2. If it be shown to the division or the commission that the requirements are being  
30 furnished in such manner that there is reasonable ground for believing that the life, health, or  
31 recovery of the employee is endangered thereby, the division or the commission may order a  
32 change in the physician, surgeon, hospital or other requirement.

33         3. All fees and charges under this chapter shall be fair and reasonable, shall be subject  
34 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation  
35 cases. A health care provider shall not charge a fee for treatment and care which is governed by  
36 the provisions of this chapter greater than the usual and customary fee the provider receives for  
37 the same treatment or service when the payor for such treatment or service is a private individual  
38 or a private health insurance carrier. The division or the commission, or the board of  
39 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all

40 disputes as to such charges. A health care provider is bound by the determination upon the  
41 reasonableness of health care bills.

42 4. The division shall, by regulation, establish methods to resolve disputes concerning the  
43 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of  
44 disputes between employers and medical providers over fees charged, whether or not paid, and  
45 shall be in lieu of any other administrative procedure under this chapter. The employee shall not  
46 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be  
47 jeopardized because of such dispute. Any application for payment of additional reimbursement,  
48 as such term is used in 8 CSR 50- 2.030, as amended, shall be filed not later than:

49 (1) Two years from the date the first notice of dispute of the medical charge was received  
50 by the health care provider if such services were rendered before July 1, 2013; and

51 (2) One year from the date the first notice of dispute of the medical charge was received  
52 by the health care provider if such services were rendered after July 1, 2013.

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54 Notice shall be presumed to occur no later than five business days after transmission by certified  
55 United States mail.

56 5. No compensation shall be payable for the death or disability of an employee, if and  
57 insofar as the death or disability may be caused, continued or aggravated by any unreasonable  
58 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the  
59 opinion of the division or the commission, inconsiderable in view of the seriousness of the  
60 injury. If the employee dies as a result of an operation made necessary by the injury, the death  
61 shall be deemed to be caused by the injury.

62 6. The testimony of any physician or chiropractic physician who treated the employee  
63 shall be admissible in evidence in any proceedings for compensation under this chapter, subject  
64 to all of the provisions of section 287.210.

65 7. Every hospital or other person furnishing the employee with medical aid shall permit  
66 its record to be copied by and shall furnish full information to the division or the commission,  
67 the employer, the employee or his dependents and any other party to any proceedings for  
68 compensation under this chapter, and certified copies of the records shall be admissible in  
69 evidence in any such proceedings.

70 8. The employer may be required by the division or the commission to furnish an injured  
71 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as  
72 needed, for life whenever the division or the commission shall find that the injured employee  
73 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The  
74 director of the division shall establish a procedure whereby a claim for compensation may be  
75 reactivated after settlement of such claim is completed. The claim shall be reactivated only after

76 the claimant can show good cause for the reactivation of this claim and the claim shall be made  
77 only for the payment of medical procedures involving life-threatening surgical procedures or if  
78 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,  
79 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation  
80 or condition which, if not treated immediately, will likely result in the death of the injured  
81 worker.

82 9. Nothing in this chapter shall prevent an employee being provided treatment for his  
83 injuries by prayer or spiritual means if the employer does not object to the treatment.

84 10. The employer shall have the right to select the licensed treating physician, surgeon,  
85 chiropractic physician, or other health care provider; provided, however, that such physicians,  
86 surgeons or other health care providers shall offer only those services authorized within the scope  
87 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not  
88 apply.

89 11. Any physician or other health care provider who orders, directs or refers a patient for  
90 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the  
91 time of the referral, disclose in writing if such health care provider, any of his partners or his  
92 employer has a financial interest in the institution or facility to which the patient is being  
93 referred, to the following:

94 (1) The patient;

95 (2) The employer of the patient with workers' compensation liability for the injury or  
96 disease being treated;

97 (3) The workers' compensation insurer of such employer; and

98 (4) The workers' compensation adjusting company for such insurer.

99 12. Violation of subsection 11 of this section is a class A misdemeanor.

100 13. (1) No hospital, physician or other health care provider, other than a hospital,  
101 physician or health care provider selected by the employee at his own expense pursuant to  
102 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for  
103 services rendered to an employee due to a work-related injury or report to any credit reporting  
104 agency any failure of the employee to make such payment, when an injury covered by this  
105 chapter has occurred and such hospital, physician or health care provider has received actual  
106 notice given in writing by the employee, the employer or the employer's insurer. Actual notice  
107 shall be deemed received by the hospital, physician or health care provider five days after  
108 mailing by certified mail by the employer or insurer to the hospital, physician or health care  
109 provider.

110 (2) The notice shall include:

111 (a) The name of the employer;

- 112 (b) The name of the insurer, if known;  
113 (c) The name of the employee receiving the services;  
114 (d) The general nature of the injury, if known; and  
115 (e) Where a claim has been filed, the claim number, if known.
- 116 (3) When an injury is found to be noncompensable under this chapter, the hospital,  
117 physician or other health care provider shall be entitled to pursue the employee for any unpaid  
118 portion of the fee or other charges for authorized services provided to the employee. Any  
119 applicable statute of limitations for an action for such fees or other charges shall be tolled from  
120 the time notice is given to the division by a hospital, physician or other health care provider  
121 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in  
122 regard to the injury which is the basis of such services is made, or in the event there is an appeal  
123 to the labor and industrial relations commission, until a decision is rendered by that commission.
- 124 (4) If a hospital, physician or other health care provider or a debt collector on behalf of  
125 such hospital, physician or other health care provider pursues any action to collect from an  
126 employee after such notice is properly given, the employee shall have a cause of action against  
127 the hospital, physician or other health care provider for actual damages sustained plus up to one  
128 thousand dollars in additional damages, costs and reasonable attorney's fees.
- 129 (5) If an employer or insurer fails to make payment for authorized services provided to  
130 the employee by a hospital, physician or other health care provider pursuant to this chapter, the  
131 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this  
132 section with a dispute against the employer or insurer for any fees or other charges for services  
133 provided.
- 134 (6) A hospital, physician or other health care provider whose services have been  
135 authorized in advance by the employer or insurer may give notice to the division of any claim  
136 for fees or other charges for services provided for a work-related injury that is covered by this  
137 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where  
138 such notice has been filed, the administrative law judge may order direct payment from the  
139 proceeds of any settlement or award to the hospital, physician or other health care provider for  
140 such fees as are determined by the division. The notice shall be on a form prescribed by the  
141 division.
- 142 14. The employer may allow or require an employee to use any of the employee's  
143 accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment,  
144 physical rehabilitation, or medical evaluations during work time. The intent of this subsection  
145 is to specifically supercede and abrogate any case law that contradicts the express language of  
146 this section.

287.270. ~~[No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder, except as provided in subsection 3 of section 287.170, and employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical or hospital benefits paid to or for the employee or his dependents on account of the injury, disability, or death, pursuant to the provisions of the contract.]~~ **1. Any savings or insurance of an injured employee or any benefits derived from any source other than the employer or employer's insurer for liability under this chapter shall be considered in determining the compensation due under this chapter, including under subsection 3 of section 287.170. Employers of professional athletes under contract shall be entitled to full credit for any wages or benefits paid to a professional athlete employee after the injury, including, but not limited to, medical, surgical, or hospital benefits paid to or for the professional athlete employee or his or her dependents on account of the injury, disability, or death, pursuant to the provisions of the contract.**

**2. If medical bills are in dispute, the administrative law judge shall have authority to order the employer responsible for medical benefits, to the satisfaction of the medical provider.**

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