

SECOND REGULAR SESSION

HOUSE BILL NO. 2607

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

5589H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 287.120, RSMo, and to enact in lieu thereof one new section relating to workers' compensation.

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

Section A. Section 287.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 10. The ability of a firefighter to receive benefits for psychological stress under section
82 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

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