

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 290
99TH GENERAL ASSEMBLY

Reported from the Committee on Small Business and Industry, February 16, 2017, with recommendation that the Senate Committee Substitute do pass.

1323S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 287.120, 287.140, 287.170, and 287.780, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation, with an existing penalty provision.

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

Section A. Sections 287.120, 287.140, 287.170, and 287.780, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.120, 287.140, 287.170, and 287.780, to read as follows:

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

14 2. The rights and remedies herein granted to an employee shall exclude
15 all other rights and remedies of the employee, his wife, her husband, parents,
16 personal representatives, dependents, heirs or next kin, at common law or
17 otherwise, on account of such injury or death by accident or occupational disease,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 except such rights and remedies as are not provided for by this chapter.

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

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

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

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

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

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

54 employer's policy clearly authorizes post-injury testing.

55 **(4) Any positive test result for a nonprescribed controlled drug**
56 **from an employee, if confirmed by mass-spectrometry, using generally**
57 **accepted medical or forensic testing procedures, shall give rise to a**
58 **rebuttable presumption that the tested nonprescribed controlled drug**
59 **was in the employee's system and, if the test was administered within**
60 **forty-eight hours of the injury, such positive result shall give rise to a**
61 **rebuttable presumption that the injury was sustained in conjunction**
62 **with the use of the tested nonprescribed controlled drug. A**
63 **preponderance of the evidence standard shall apply to rebut such**
64 **presumption.**

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

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

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

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

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

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

88 10. The ability of a firefighter to receive benefits for psychological stress
89 under section 287.067 shall not be diminished by the provisions of subsections 8

90 and 9 of this section.

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

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

36 or other requirement.

37 3. All fees and charges under this chapter shall be fair and reasonable,
38 shall be subject to regulation by the division or the commission, or the board of
39 rehabilitation in rehabilitation cases. A health care provider shall not charge a
40 fee for treatment and care which is governed by the provisions of this chapter
41 greater than the usual and customary fee the provider receives for the same
42 treatment or service when the payor for such treatment or service is a private
43 individual or a private health insurance carrier. The division or the commission,
44 or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction
45 to hear and determine all disputes as to such charges. A health care provider is
46 bound by the determination upon the reasonableness of health care bills.

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

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

59 (2) One year from the date the first notice of dispute of the medical charge
60 was received by the health care provider if such services were rendered after July
61 1, 2013.

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

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

71 6. The testimony of any physician or chiropractic physician who treated

72 the employee shall be admissible in evidence in any proceedings for compensation
73 under this chapter, subject to all of the provisions of section 287.210.

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

80 8. The employer may be required by the division or the commission to
81 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic
82 joints, or eyes, or braces, as needed, for life whenever the division or the
83 commission shall find that the injured employee may be partially or wholly
84 relieved of the effects of a permanent injury by the use thereof. The director of
85 the division shall establish a procedure whereby a claim for compensation may
86 be reactivated after settlement of such claim is completed, **unless the employee**
87 **explicitly agrees that the claim cannot be reactivated under this**
88 **subsection.** The claim shall be reactivated only after the claimant can show
89 good cause for the reactivation of this claim and the claim shall be made only for
90 the payment of medical procedures involving life-threatening surgical procedures
91 or if the claimant requires the use of a new, or the modification, alteration or
92 exchange of an existing, prosthetic device. For the purpose of this subsection,
93 "life threatening" shall mean a situation or condition which, if not treated
94 immediately, will likely result in the death of the injured worker.

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

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

103 11. Any physician or other health care provider who orders, directs or
104 refers a patient for treatment, testing, therapy or rehabilitation at any institution
105 or facility shall, at or prior to the time of the referral, disclose in writing if such
106 health care provider, any of his partners or his employer has a financial interest
107 in the institution or facility to which the patient is being referred, to the

108 following:

109 (1) The patient;

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

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

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

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

115 13. (1) No hospital, physician or other health care provider, other than
116 a hospital, physician or health care provider selected by the employee at his own
117 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
118 any fee or any portion of a fee for services rendered to an employee due to a
119 work-related injury or report to any credit reporting agency any failure of the
120 employee to make such payment, when an injury covered by this chapter has
121 occurred and such hospital, physician or health care provider has received actual
122 notice given in writing by the employee, the employer or the employer's
123 insurer. Actual notice shall be deemed received by the hospital, physician or
124 health care provider five days after mailing by certified mail by the employer or
125 insurer to the hospital, physician or health care provider.

126 (2) The notice shall include:

127 (a) The name of the employer;

128 (b) The name of the insurer, if known;

129 (c) The name of the employee receiving the services;

130 (d) The general nature of the injury, if known; and

131 (e) Where a claim has been filed, the claim number, if known.

132 (3) When an injury is found to be noncompensable under this chapter, the
133 hospital, physician or other health care provider shall be entitled to pursue the
134 employee for any unpaid portion of the fee or other charges for authorized
135 services provided to the employee. Any applicable statute of limitations for an
136 action for such fees or other charges shall be tolled from the time notice is given
137 to the division by a hospital, physician or other health care provider pursuant to
138 subdivision (6) of this subsection, until a determination of noncompensability in
139 regard to the injury which is the basis of such services is made, or in the event
140 there is an appeal to the labor and industrial relations commission, until a
141 decision is rendered by that commission.

142 (4) If a hospital, physician or other health care provider or a debt collector
143 on behalf of such hospital, physician or other health care provider pursues any

144 action to collect from an employee after such notice is properly given, the
145 employee shall have a cause of action against the hospital, physician or other
146 health care provider for actual damages sustained plus up to one thousand
147 dollars in additional damages, costs and reasonable attorney's fees.

148 (5) If an employer or insurer fails to make payment for authorized
149 services provided to the employee by a hospital, physician or other health care
150 provider pursuant to this chapter, the hospital, physician or other health care
151 provider may proceed pursuant to subsection 4 of this section with a dispute
152 against the employer or insurer for any fees or other charges for services
153 provided.

154 (6) A hospital, physician or other health care provider whose services have
155 been authorized in advance by the employer or insurer may give notice to the
156 division of any claim for fees or other charges for services provided for a
157 work-related injury that is covered by this chapter, with copies of the notice to
158 the employee, employer and the employer's insurer. Where such notice has been
159 filed, the administrative law judge may order direct payment from the proceeds
160 of any settlement or award to the hospital, physician or other health care
161 provider for such fees as are determined by the division. The notice shall be on
162 a form prescribed by the division.

163 14. The employer may allow or require an employee to use any of the
164 employee's accumulated paid leave, personal leave, or medical or sick leave to
165 attend to medical treatment, physical rehabilitation, or medical evaluations
166 during work time. The intent of this subsection is to specifically supercede and
167 abrogate any case law that contradicts the express language of this section.

287.170. 1. For temporary total disability the employer shall pay
2 compensation for not more than four hundred weeks during the continuance of
3 such disability at the weekly rate of compensation in effect under this section on
4 the date of the injury for which compensation is being made. The amount of such
5 compensation shall be computed as follows:

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

13 injury;

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

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

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

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

34 2. Temporary total disability payments shall be made to the claimant by
35 check or other negotiable instruments approved by the director which will not
36 result in delay in payment and shall be forwarded directly to the claimant
37 without intervention, or, when requested, to claimant's attorney if represented,
38 except as provided in section 454.517, by any other party except by order of the
39 division of workers' compensation.

40 3. An employee is disqualified from receiving temporary total disability
41 during any period of time in which the claimant applies and receives
42 unemployment compensation.

43 4. If the employee is terminated from post-injury employment based upon
44 the employee's post-injury misconduct, neither temporary total disability nor
45 temporary partial disability benefits under this section or section 287.180 are
46 payable. As used in this section, the phrase "post-injury misconduct" shall not
47 include absence from the workplace due to an injury unless the employee is
48 capable of working with restrictions, as certified by a physician.

49 **5. If an employee voluntarily separates from employment with an**
50 **employer at a time when the employer had work available for the**
51 **employee that was in compliance with any medical restriction imposed**
52 **upon the employee as a result of the injury that is the subject of a claim**
53 **for benefits under this chapter, neither temporary total disability nor**
54 **temporary partial disability benefits available under this section or**
55 **section 287.180 shall be payable.**

 287.780. No employer or agent shall discharge or [in any way]
2 discriminate against any employee for exercising any of his **or her** rights under
3 this chapter **when the exercising of such rights is the motivating factor**
4 **in the discharge or discrimination.** Any employee who has been discharged
5 or discriminated against **in such manner** shall have a civil action for damages
6 against his **or her** employer.

✓

Bill

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