

SECOND REGULAR SESSION

SENATE BILL NO. 827

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 22, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5907S.011

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Section A. Section 287.120, RSMo, is repealed and one new section
2 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
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 arising
4 out of and in the course of the employee's employment[.]. **Any employee of**
5 **such employer shall not be liable for any injury or death for which**
6 **compensation is recoverable under this chapter and every employer and**
7 **employees of such employer** and shall be released from all other liability
8 therefor whatsoever, whether to the employee or any other person, **except that**
9 **an employee shall not be released from liability for injury or death if**
10 **the employee engaged in an affirmative negligent act with the purpose**
11 **of causing or increasing the risk of injury.** The term "accident" as used in
12 this section shall include, but not be limited to, injury or death of the employee
13 caused by the 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 accidental injury or death, except such rights and
18 remedies as are not provided for by this chapter.

19 3. No compensation shall be allowed under this chapter for the injury or

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

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 7. Where the employee's participation in a recreational activity or

56 program is the prevailing cause of the injury, benefits or compensation otherwise
57 payable under this chapter for death or disability shall be forfeited regardless
58 that the employer may have promoted, sponsored or supported the recreational
59 activity or program, expressly or impliedly, in whole or in part. The forfeiture of
60 benefits or compensation shall not apply when:

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

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

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

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

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

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

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