

SECOND REGULAR SESSION

SENATE BILL NO. 828

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

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

TERRY L. SPIELER, Secretary.

5909S.011

AN ACT

To repeal sections 287.067, 287.120, and 287.150, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

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

Section A. Sections 287.067, 287.120, and 287.150, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 287.067,
3 287.120, and 287.150, to read as follows:

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

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

17 3. An injury due to repetitive motion is recognized as an occupational
18 disease for purposes of this chapter. An occupational disease due to repetitive

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

19 motion is compensable only if the occupational exposure was the prevailing factor
20 in causing both the resulting medical condition and disability. The "prevailing
21 factor" is defined to be the primary factor, in relation to any other factor, causing
22 both the resulting medical condition and disability. Ordinary, gradual
23 deterioration, or progressive degeneration of the body caused by aging or by the
24 normal activities of day-to-day living shall not be compensable.

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

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

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

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

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

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, and shall be released from
5 all other liability therefor whatsoever, whether to the employee or any other
6 person. The term "accident" as used in this section shall include, but not be
7 limited to, injury or death of the employee caused by the unprovoked violence or
8 assault against the employee by any person.

9 2. The rights and remedies herein granted to an employee shall exclude
10 all other rights and remedies of the employee, his wife, her husband, parents,
11 personal representatives, dependents, heirs or next kin, at common law or
12 otherwise, on account of such [accidental] injury or death **by accident or**
13 **occupational disease**, except such rights and remedies as are not provided for
14 by this chapter.

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

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

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

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

37 (2) If, however, the use of alcohol or nonprescribed controlled drugs in
38 violation of the employer's rule or policy is the proximate cause of the injury, then

39 the benefits or compensation otherwise payable under this chapter for death or
40 disability shall be forfeited.

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

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

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

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

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

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

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

74 10. The ability of a firefighter to receive benefits for psychological stress

75 under section 287.067 shall not be diminished by the provisions of subsections 8
76 and 9 of this section.

287.150. 1. Where a third person is liable to the employee or to the
2 dependents, for the injury or death, the employer shall be subrogated to the right
3 of the employee or to the dependents against such third person, and the recovery
4 by such employer shall not be limited to the amount payable as compensation to
5 such employee or dependents, but such employer may recover any amount which
6 such employee or his dependents would have been entitled to recover. Any
7 recovery by the employer against such third person shall be apportioned between
8 the employer and employee or his dependents using the provisions of subsections
9 2 and 3 of this section.

10 2. When a third person is liable for the death of an employee and
11 compensation is paid or payable under this chapter, and recovery is had by a
12 dependent under this chapter either by judgment or settlement for the wrongful
13 death of the employee, the employer shall have a subrogation lien on any recovery
14 and shall receive or have credit for sums paid or payable under this chapter to
15 any of the dependents of the deceased employee to the extent of the settlement
16 or recovery by such dependents for the wrongful death. Recovery by the employer
17 and credit for future installments shall be computed using the provisions of
18 subsection 3 of this section relating to comparative fault of the employee.

19 3. Whenever recovery against the third person is effected by the employee
20 or his dependents, the employer shall pay from his share of the recovery a
21 proportionate share of the expenses of the recovery, including a reasonable
22 attorney fee. After the expenses and attorney fee have been paid, the balance of
23 the recovery shall be apportioned between the employer and the employee or his
24 dependents in the same ratio that the amount due the employer bears to the total
25 amount recovered if there is no finding of comparative fault on the part of the
26 employee, or the total damages determined by the trier of fact if there is a finding
27 of comparative fault on the part of the employee. Notwithstanding the foregoing
28 provision, the balance of the recovery may be divided between the employer and
29 the employee or his dependents as they may otherwise agree. Any part of the
30 recovery found to be due to the employer, the employee or his dependents shall
31 be paid forthwith and any part of the recovery paid to the employee or his
32 dependents under this section shall be treated by them as an advance payment
33 by the employer on account of any future installments of compensation in the
34 following manner:

35 (1) The total amount paid to the employee or his dependents shall be
36 treated as an advance payment if there is no finding of comparative fault on the
37 part of the employee; or

38 (2) A percentage of the amount paid to the employee or his dependents
39 equal to the percentage of fault assessed to the third person from whom recovery
40 is made shall be treated as an advance payment if there is a finding of
41 comparative fault on the part of the employee.

42 4. In any case in which an injured employee has been paid benefits from
43 the second injury fund as provided in subsection 3 of section 287.141, and
44 recovery is had against the third party liable to the employee for the injury, the
45 second injury fund shall be subrogated to the rights of the employee against said
46 third party to the extent of the payments made to him from such fund, subject to
47 provisions of subsections 2 and 3 of this section.

48 5. No construction design professional who is retained to perform
49 professional services on a construction project or any employee of a construction
50 design professional who is assisting or representing the construction design
51 professional in the performance of professional services on the site of the
52 construction project shall be liable for any injury resulting from the employer's
53 failure to comply with safety standards on a construction project for which
54 compensation is recoverable under the workers' compensation law, unless
55 responsibility for safety practices is specifically assumed by contract. The
56 immunity provided by this subsection to any construction design professional
57 shall not apply to the negligent preparation of design plans or specifications.

58 6. Any provision in any contract or subcontract, where one party is an
59 employer in the construction group of code classifications, which purports to
60 waive subrogation rights provided under this section in anticipation of a future
61 injury or death is hereby declared against public policy and void. Each contract
62 of insurance for workers' compensation shall require the insurer to diligently
63 pursue all subrogation rights of the employer and shall require the employer to
64 fully cooperate with the insurer in pursuing such recoveries, except that the
65 employer may enter into compromise agreements with an insurer in lieu of the
66 insurer pursuing subrogation against another party. The amount of any
67 subrogation recovery by an insurer shall be credited against the amount of the
68 actual paid losses in the determination of such employer's experience modification
69 factor within forty-five days of the collection of such amount.

70 7. **Notwithstanding any other provision of this section, when a**

71 third person is liable to the employee or to the dependents of an
72 employee in a case when there is a finding that an occupational disease
73 was caused by toxic exposure and the employee or dependents are
74 compensated under this chapter, in no case shall the employer be
75 subrogated to the rights of an employee or to the dependents of an
76 employee against such third person when the employer caused the
77 occupational disease. As used in this subsection, the term "toxic
78 exposure" is defined to mean exposure to chemicals, dusts, particulates,
79 fumes, mists, fibers, solvents, vapors, radiation, or other substances or
80 materials that, when ingested, consumed, inhaled, or absorbed are
81 sufficient to cause disease, death, mutations, cancer, deformities, or
82 reproductive abnormalities in humans.

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