

SENATE BILL NO. 920

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

3300S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

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

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Section A. Section 287.120, RSMo, is repealed and one new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

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

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

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

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

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

36 5. Where the injury is caused by the failure of the
37 employee to use safety devices where provided by the
38 employer, or from the employee's failure to obey any
39 reasonable rule adopted by the employer for the safety of
40 employees, the compensation and death benefit provided for
41 herein shall be reduced at least twenty-five but not more
42 than fifty percent; provided, that it is shown that the
43 employee had actual knowledge of the rule so adopted by the
44 employer; and provided, further, that the employer had,
45 prior to the injury, made a reasonable effort to cause his
46 or her employees to use the safety device or devices and to
47 obey or follow the rule so adopted for the safety of the
48 employees.

49 6. (1) Where the employee fails to obey any rule or
50 policy adopted by the employer relating to a drug-free

51 workplace or the use of alcohol or nonprescribed controlled
52 drugs in the workplace, the compensation and death benefit
53 provided for herein shall be reduced fifty percent if the
54 injury was sustained in conjunction with the use of alcohol
55 or nonprescribed controlled drugs.

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

61 (3) The voluntary use of alcohol to the percentage of
62 blood alcohol sufficient under Missouri law to constitute
63 legal intoxication shall give rise to a rebuttable
64 presumption that the voluntary use of alcohol under such
65 circumstances was the proximate cause of the injury. A
66 preponderance of the evidence standard shall apply to rebut
67 such presumption. An employee's refusal to take a test for
68 alcohol or a nonprescribed controlled substance, as defined
69 by section 195.010, at the request of the employer shall
70 result in the forfeiture of benefits under this chapter if
71 the employer had sufficient cause to suspect use of alcohol
72 or a nonprescribed controlled substance by the claimant or
73 if the employer's policy clearly authorizes post-injury
74 testing.

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

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

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

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

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

95 7. Where the employee's participation in a
96 recreational activity or program is the prevailing cause of
97 the injury, benefits or compensation otherwise payable under
98 this chapter for death or disability shall be forfeited
99 regardless that the employer may have promoted, sponsored or
100 supported the recreational activity or program, expressly or
101 impliedly, in whole or in part. The forfeiture of benefits
102 or compensation shall not apply when:

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

105 (2) The employee was paid wages or travel expenses
106 while participating in such recreational activity or
107 program; or

108 (3) The injury from such recreational activity or
109 program occurs on the employer's premises due to an unsafe
110 condition and the employer had actual knowledge of the
111 employee's participation in the recreational activity or
112 program and of the unsafe condition of the premises and
113 failed to either curtail the recreational activity or
114 program or cure the unsafe condition.

115 8. Mental injury resulting from work-related stress
116 does not arise out of and in the course of the employment,
117 unless it is demonstrated that the stress is work related
118 and was extraordinary and unusual. The amount of work
119 stress shall be measured by objective standards and actual
120 events.

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

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

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