

FIRST REGULAR SESSION

# HOUSE BILL NO. 970

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NAEGER, SECREST, DEMPSEY, SURFACE, NORDWALD,  
OSTMANN, BEARDEN, REINHART (Co-sponsors) and GASKILL.

Read 1<sup>st</sup> time March 13, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2073L.02I

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### AN ACT

To repeal section 287.120, RSMo 2000, relating to elimination of workers' compensation benefits to employees when the employee was using drugs at the time of the accident and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 287.120, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows: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] **pursuant to** this chapter for personal injury or death of the employee by accident arising out of and in the course of his **or her** employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. 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, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

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

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

15           4. Where the injury is caused by the failure of the employer to comply with any statute  
16 in this state or any lawful order of the division or the commission, the compensation and death  
17 benefit provided [for under] **pursuant to** this chapter shall be increased fifteen percent.

18           5. Where the injury is caused by the willful failure of the employee to use safety devices  
19 where provided by the employer, or from the employee's failure to obey any reasonable rule  
20 adopted by the employer for the safety of employees, which rule has been kept posted in a  
21 conspicuous place on the employer's premises, the compensation and death benefit provided for  
22 herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual  
23 knowledge of the rule so adopted by the employer; and provided, further, that the employer had,  
24 prior to the injury, made a diligent effort to cause his **or her** employees to use the safety device  
25 or devices and to obey or follow the rule so adopted for the safety of the employees.

26           6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
27 relating to the use of alcohol or nonprescribed controlled drugs in the workplace, which rule or  
28 policy has been kept posted in a conspicuous place on the employer's premises, the compensation  
29 and death benefit provided for herein shall be reduced fifteen percent if the injury was sustained  
30 in conjunction with the use of alcohol or nonprescribed controlled drugs; provided, that it is  
31 shown that the employee had actual knowledge of the rules or policy so adopted by the employer  
32 and, provided further that the employer had, prior to the injury, made a diligent effort to inform  
33 the employee of the requirement to obey any reasonable rule or policy adopted by the employer.

34           (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the  
35 employer's rule or policy which is posted and publicized as set forth in subdivision (1) is the  
36 proximate cause of the injury, then the benefits or compensation otherwise payable [under]  
37 **pursuant to** this chapter for death or disability shall be forfeited.

38           **(3) In addition to any reduction of benefits pursuant to subdivision (2) of this**  
39 **subsection, drug use shall be considered the proximate cause, thus resulting in a forfeiture**  
40 **of all benefits or compensation, of any injury to any employee who, at the time of the injury**  
41 **tests positive for any controlled substance subject to testing pursuant to drug testing**  
42 **regulations adopted by either the commission or the United States Department of**  
43 **Transportation.**

44           **(4) The forfeiture of benefits or compensation pursuant to subdivision (2) or (3) of this**  
45 **subsection shall not apply when:**

46           (a) The employer has actual knowledge of the employee's use of the alcohol or  
47 nonprescribed controlled drugs and in the face thereof fails to take any recuperative or  
48 disciplinary action; or

49           (b) As part of the employee's employment, he **or she** is authorized by the employer to  
50 use such alcohol or nonprescribed controlled drugs.

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

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

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

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

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

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

71           10. The ability of a firefighter to receive benefits for psychological stress [under]  
72 **pursuant to** section 287.067 shall not be diminished by the provisions of subsections 8 and 9  
73 of this section.