

FIRST REGULAR SESSION

HOUSE BILL NO. 637

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), ROORDA, JOHNSON (61), WALSH, CHAPPELLE-NADAL, BURNETT, HARRIS (23), YOUNG, CORCORAN, BRINGER, LIESE, BRUNS, WALTON, BAKER (25), OXFORD, CASEY, SALVA, DARROUGH, EL-AMIN, BROWN (50), KRATKY, HOSKINS, HENKE, KUESSNER, DOUGHERTY, ROBINSON, SKAGGS, VILLA, SPRENG, DAUS, BOWMAN, WAGNER, WITTE, FRASER, ZWEIFEL, AULL, HUGHES, MEADOWS, BLAND, SWINGER, GEORGE, LOW (39), WRIGHT-JONES (63), HAYWOOD, BOYKINS, MEINERS, STORCH, DONNELLY, YAEGER, CURLS, LOWE (44), HUBBARD, SHOEMYER, PAGE, LAMPE, WHORTON, RUCKER, SCHOEMEHL, PARSON, VOGT, HARRIS (110), LeVOTA, SELBY AND JOLLY (Co-sponsors).

Read 1st time February 24, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1451L.01H

AN ACT

To repeal sections 287.067 and 287.140, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation benefits, with penalty provisions.

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

Section A. Sections 287.067 and 287.140, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.067 and 287.140, to read as follows:

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

9 2. An occupational disease is compensable if it is clearly work related and meets the
10 requirements of an injury which is compensable as provided in subsections 2 and 3 of section
11 287.020. An occupational disease is not compensable merely because work was a triggering or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 precipitating factor.

13 3. "Loss of hearing due to industrial noise" is recognized as an occupational disease for
14 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to
15 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of
16 producing occupational deafness.

17 4. "Radiation disability" is recognized as an occupational disease for purposes of this
18 chapter and is hereby defined to be that disability due to radioactive properties or substances or
19 to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the
20 use of or direct contact with radium or radioactive properties or substances or the use of or direct
21 exposure to Roentgen rays (X rays) or ionizing radiation.

22 5. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the
23 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases
24 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,
25 carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid fire department
26 **and peace officers certified under chapter 590, RSMo**, if a direct causal relationship is
27 established.

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

31 7. With regard to occupational disease due to repetitive motion, if the exposure to the
32 repetitive motion which is found to be the cause of the injury is for a period of less than three
33 months and the evidence demonstrates that the exposure to the repetitive motion with a prior
34 employer was the substantial contributing factor to the injury, the prior employer shall be liable
35 for such occupational disease.

287.140. 1. In addition to all other compensation, the employee shall receive and the
2 employer shall provide such medical, surgical, chiropractic, and hospital treatment, including
3 nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or
4 disability, to cure and relieve from the effects of the injury, **which shall include heart and lung**
5 **examinations administered to firefighters of a paid fire department and peace officers**
6 **certified under chapter 590, RSMo**. If the employee desires, he shall have the right to select
7 his own physician, surgeon, or other such requirement at his own expense. Where the
8 requirements are 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 is selected by the
10 employer or is selected by the employee at the employee's expense, the health care provider shall
11 have the affirmative duty to communicate fully with the employee regarding the nature of the
12 employee's injury and recommended treatment exclusive of any evaluation for a permanent

13 disability rating. Failure to perform such duty to communicate shall constitute a disciplinary
14 violation by the provider subject to the provisions of chapter 620, RSMo. When an employee
15 is required to submit to medical examinations or necessary medical treatment at a place outside
16 of the local or metropolitan area from the place of injury or the place of his residence, the
17 employer or its insurer shall advance or reimburse the employee for all necessary and reasonable
18 expenses; except that an injured employee who resides outside the state of Missouri and who is
19 employed by an employer located in Missouri shall have the option of selecting the location of
20 services provided in this section either at a location within one hundred miles of the injured
21 employee's residence, place of injury or place of hire by the employer. The choice of provider
22 within the location selected shall continue to be made by the employer. In case of a medical
23 examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall
24 be presented to the legal advisor, the administrative law judge or the commission, who shall set
25 the sum to be paid and same shall be paid by the employer prior to the medical examination. In
26 no event, however, shall the employer or its insurer be required to pay transportation costs for
27 a greater distance than two hundred fifty miles each way from place of treatment. In addition to
28 all other payments authorized or mandated under this subsection, when an employee who has
29 returned to full-time employment is required to submit to a medical examination for the purpose
30 of evaluating permanent disability, or to undergo physical rehabilitation, the employer or its
31 insurer shall pay a proportionate weekly compensation benefit based on the provisions of section
32 287.180 for such wages that are lost due to time spent undergoing such medical examinations
33 or physical rehabilitation, except that where the employee is undergoing physical rehabilitation,
34 such proportionate weekly compensation benefit payment shall be limited to a time period of no
35 more than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall
36 mean the restoration of the seriously injured person as soon as possible and as nearly as possible
37 to a condition of self-support and maintenance as an able-bodied worker. Determination as to
38 what care and restoration constitutes physical rehabilitation shall be the sole province of the
39 treating physician. Should the employer or its insurer contest the determination of the treating
40 physician, then the director shall review the case at question and issue his determination. Such
41 determination by the director shall be appealable like any other finding of the director or the
42 division. Serious injury includes, but is not limited to, quadriplegia, paraplegia, amputations of
43 hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and back injuries not amenable
44 alone to recognized medical and surgical procedures.

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

49 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
50 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
51 cases. A health care provider shall not charge a fee for treatment and care which is governed by
52 the provisions of this chapter greater than the usual and customary fee the provider receives for
53 the same treatment or service when the payor for such treatment or service is a private individual
54 or a private health insurance carrier. The division or the commission, or the board of
55 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all
56 disputes as to such charges. A health care provider is bound by the determination upon the
57 reasonableness of health care bills.

58 4. The division shall, by regulation, establish methods to resolve disputes concerning the
59 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
60 disputes between employers and medical providers over fees charged, whether or not paid, and
61 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
62 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
63 jeopardized because of such dispute.

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

70 6. The testimony of any physician or chiropractic physician who treated the employee
71 shall be admissible in evidence in any proceedings for compensation under this chapter, subject
72 to all of the provisions of section 287.210.

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

78 8. The employer may be required by the division or the commission to furnish an injured
79 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as
80 needed, for life whenever the division or the commission shall find that the injured employee
81 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The
82 director of the division shall establish a procedure whereby a claim for compensation may be
83 reactivated after settlement of such claim is completed. The claim shall be reactivated only after
84 the claimant can show good cause for the reactivation of this claim and the claim shall be made

85 only for the payment of medical procedures involving life-threatening surgical procedures or if
86 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,
87 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation
88 or condition which, if not treated immediately, will likely result in the death of the injured
89 worker.

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

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

97 11. Any physician or other health care provider who orders, directs or refers a patient for
98 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the
99 time of the referral, disclose in writing if such health care provider, any of his partners or his
100 employer has a financial interest in the institution or facility to which the patient is being
101 referred, to the following:

102 (1) The patient;

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

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

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

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

108 13. (1) No hospital, physician or other health care provider, other than a hospital,
109 physician or health care provider selected by the employee at his own expense pursuant to
110 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
111 services rendered to an employee due to a work-related injury or report to any credit reporting
112 agency any failure of the employee to make such payment, when an injury covered by this
113 chapter has occurred and such hospital, physician or health care provider has received actual
114 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
115 shall be deemed received by the hospital, physician or health care provider five days after
116 mailing by certified mail by the employer or insurer to the hospital, physician or health care
117 provider.

118 (2) The notice shall include:

119 (a) The name of the employer;

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

- 121 (c) The name of the employee receiving the services;
122 (d) The general nature of the injury, if known; and
123 (e) Where a claim has been filed, the claim number, if known.
- 124 (3) When an injury is found to be noncompensable under this chapter, the hospital,
125 physician or other health care provider shall be entitled to pursue the employee for any unpaid
126 portion of the fee or other charges for authorized services provided to the employee. Any
127 applicable statute of limitations for an action for such fees or other charges shall be tolled from
128 the time notice is given to the division by a hospital, physician or other health care provider
129 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in
130 regard to the injury which is the basis of such services is made, or in the event there is an appeal
131 to the labor and industrial relations commission, until a decision is rendered by that commission.
- 132 (4) If a hospital, physician or other health care provider or a debt collector on behalf of
133 such hospital, physician or other health care provider pursues any action to collect from an
134 employee after such notice is properly given, the employee shall have a cause of action against
135 the hospital, physician or other health care provider for actual damages sustained plus up to one
136 thousand dollars in additional damages, costs and reasonable attorney's fees.
- 137 (5) If an employer or insurer fails to make payment for authorized services provided to
138 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
139 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
140 section with a dispute against the employer or insurer for any fees or other charges for services
141 provided.
- 142 (6) A hospital, physician or other health care provider whose services have been
143 authorized in advance by the employer or insurer may give notice to the division of any claim
144 for fees or other charges for services provided for a work-related injury that is covered by this
145 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where
146 such notice has been filed, the administrative law judge may order direct payment from the
147 proceeds of any settlement or award to the hospital, physician or other health care provider for
148 such fees as are determined by the division. The notice shall be on a form prescribed by the
149 division.