

FIRST REGULAR SESSION

HOUSE BILL NO. 221

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES McNARY (Sponsor), LAIR, FISHER, DIECKHAUS, DIEHL, DUGGER, SCHARNHORST, BRANDOM, DENISON, POLLOCK, WALLINGFORD, LEARA, THOMSON, NANCE, CROSS, WIELAND, ALLEN, NOLTE, WYATT, KOENIG, JONES (89), HOUGHTON, FUHR, KELLEY (126), FLANIGAN, McGHEE, GATSCHENBERGER, WHITE, LARGENT, RUZICKA, JOHNSON, COX, SCHOELLER AND DAY (Co-sponsors).

0313L.01H

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 287.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows: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 this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment[.]. **The employer, or other employee of such employer, shall not be liable for any injury or death for which compensation is recoverable under this chapter** 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.

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.

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

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

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

28 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
29 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the
30 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent
31 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled
32 drugs.

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

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

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

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

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

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

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

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

64 10. The ability of a firefighter to receive benefits for psychological stress under section
65 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.