

**HOUSE** \_\_\_\_\_ **AMENDMENT NO.** \_\_\_\_\_

**Offered By**

AMEND House Bill No. 1403, Page 1, Section A, Line 4, by inserting the following after all of said Line:

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

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

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

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

5. "Radiation disability" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances or to

1 Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the use  
2 of or direct contact with radium or radioactive properties or substances or the use of or direct  
3 exposure to Roentgen rays (X-rays) or ionizing radiation.

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

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

14 8. With regard to occupational disease due to repetitive motion, if the exposure to the  
15 repetitive motion which is found to be the cause of the injury is for a period of less than three  
16 months and the evidence demonstrates that the exposure to the repetitive motion with the  
17 immediate prior employer was the prevailing factor in causing the injury, the prior employer shall  
18 be liable for such occupational disease.”; and

19  
20 FURTHER AMEND said bill, Section 287.120, Page 1, Lines 4-8, by deleting said Lines and  
21 inserting in lieu thereof the following:

22 “in the course of the employee’s employment[.]. Any employee of such employer shall  
23 not be liable for any injury or death for which compensation is recoverable under this chapter and  
24 every employer and employees of such employer shall be released from all other liability therefor  
25 whatsoever, whether to the employee or any other person, except that an employee shall not be  
26 released from liability for injury or death if the employee engaged in an affirmative negligent act  
27 that purposefully and dangerously caused or increased the risk of injury. The term “accident” as  
28 used”; and

29  
30 FURTHER AMEND said bill, Section 287.149, Page 9, Line 10, by inserting the following after  
31 all of said Line:

32 “287.150. 1. Where a third person is liable to the employee or to the dependents, for the  
33 injury or death, the employer shall be subrogated to the right of the employee or to the dependents  
34 against such third person, and the recovery by such employer shall not be limited to the amount  
35 payable as compensation to such employee or dependents, but such employer may recover any  
36 amount which such employee or his dependents would have been entitled to recover. Any

1 recovery by the employer against such third person shall be apportioned between the employer  
2 and employee or his dependents using the provisions of subsections 2 and 3 of this section.

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

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

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

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

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

34 5. No construction design professional who is retained to perform professional services on  
35 a construction project or any employee of a construction design professional who is assisting or  
36 representing the construction design professional in the performance of professional services on

1 the site of the construction project shall be liable for any injury resulting from the employer's  
2 failure to comply with safety standards on a construction project for which compensation is  
3 recoverable under the workers' compensation law, unless responsibility for safety practices is  
4 specifically assumed by contract. The immunity provided by this subsection to any construction  
5 design professional shall not apply to the negligent preparation of design plans or specifications.

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

16 7. Notwithstanding any other provision of this section, when a third person is liable to the  
17 employee or to the dependents of an employee in a case when there is a finding that an  
18 occupational disease was caused by toxic exposure and the employee or dependents are  
19 compensated under this chapter, in no case shall the employer be subrogated to the rights of an  
20 employee or to the dependents of an employee against such third person when the employer  
21 caused the occupational disease. As used in this subsection, the term "toxic exposure" is defined  
22 to mean exposure to chemicals, dusts, particulates, fumes, mists, fibers, solvents, vapors,  
23 radiation, or other substances or materials that, when ingested, consumed, inhaled, or absorbed are  
24 sufficient to cause disease, death, mutations, cancer, deformities, or reproductive abnormalities in  
25 humans."; and

26  
27 Further amend said bill by amending the title, enacting clause, and intersectional references  
28 accordingly.