

FIRST REGULAR SESSION

HOUSE BILL NO. 1100

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BERNSKOETTER.

1941H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.120, 287.140, 287.170, 287.280, and 287.780, RSMo, and to enact in lieu thereof five new sections relating to workers' compensation.

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

Section A. Sections 287.120, 287.140, 287.170, 287.280, and 287.780, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 287.120, 287.140, 287.170, 287.280, and 287.780, to read as follows: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 or occupational disease arising out of and in the course of the employee's employment. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury. 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 injury or death by accident or occupational disease, 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.

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

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

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

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

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

39 (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A
42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section
44 195.010, at the request of the employer shall result in the forfeiture of benefits under this chapter
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

47 **(4) Any positive test result for a nonprescribed controlled drug from an employee,**
48 **if confirmed by mass spectrometry using generally accepted medical or forensic testing**
49 **procedures, shall give rise to a rebuttable presumption that the tested nonprescribed**
50 **controlled drug was in the employee's system and, if the test was administered within**
51 **twenty-four hours of the injury, such positive result shall give rise to a rebuttable**
52 **presumption that the injury was sustained in conjunction with the use of the tested**

53 **nonprescribed controlled drug. A preponderance of the evidence standard shall apply to**
54 **rebut such presumption.**

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

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

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

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

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

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

75 10. The ability of a firefighter to receive benefits for psychological stress under section
76 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. If the employee desires, he **or she** shall have the right to select his **or her** own
6 physician, surgeon, or other such requirement at his **or her** own expense. Where the
7 requirements are furnished by a public hospital or other institution, payment therefor shall be
8 made to the proper authorities. Regardless of whether the health care provider is selected by the
9 employer or is selected by the employee at the employee's expense, the health care provider shall
10 have the affirmative duty to communicate fully with the employee regarding the nature of the
11 employee's injury and recommended treatment exclusive of any evaluation for a permanent
12 disability rating. Failure to perform such duty to communicate shall constitute a disciplinary

13 violation by the provider subject to the provisions of chapter 620. When an employee is required
14 to submit to medical examinations or necessary medical treatment at a place outside of the local
15 or metropolitan area from the employee's principal place of employment, the employer or its
16 insurer shall advance or reimburse the employee for all necessary and reasonable expenses;
17 except that an injured employee who resides outside the state of Missouri and who is employed
18 by an employer located in Missouri shall have the option of selecting the location of services
19 provided in this section either at a location within one hundred miles of the injured employee's
20 residence, place of injury or place of hire by the employer. The choice of provider within the
21 location selected shall continue to be made by the employer. In case of a medical examination
22 if a dispute arises as to what expenses shall be paid by the employer, the matter shall be
23 presented to the legal advisor, the administrative law judge or the commission, who shall set the
24 sum to be paid and same shall be paid by the employer prior to the medical examination. In no
25 event, however, shall the employer or its insurer be required to pay transportation costs for a
26 greater distance than two hundred fifty miles each way from place of treatment.

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

31 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
32 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
33 cases. A health care provider shall not charge a fee for treatment and care which is governed by
34 the provisions of this chapter greater than the usual and customary fee the provider receives for
35 the same treatment or service when the payor for such treatment or service is a private individual
36 or a private health insurance carrier. The division or the commission, or the board of
37 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all
38 disputes as to such charges. A health care provider is bound by the determination upon the
39 reasonableness of health care bills.

40 4. The division shall, by regulation, establish methods to resolve disputes concerning the
41 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
42 disputes between employers and medical providers over fees charged, whether or not paid, and
43 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
44 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
45 jeopardized because of such dispute. Any application for payment of additional reimbursement,
46 as such term is used in 8 CSR 50-2.030, as amended, shall be filed not later than:

47 (1) Two years from the date the first notice of dispute of the medical charge was received
48 by the health care provider if such services were rendered before July 1, 2013; and

49 (2) One year from the date the first notice of dispute of the medical charge was received
50 by the health care provider if such services were rendered after July 1, 2013.

51

52 Notice shall be presumed to occur no later than five business days after transmission by certified
53 United States mail.

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

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

63 7. Every hospital or other person furnishing the employee with medical aid shall permit
64 its record to be copied by and shall furnish full information to the division or the commission,
65 the employer, the employee or his **or her** dependents and any other party to any proceedings for
66 compensation under this chapter, and certified copies of the records shall be admissible in
67 evidence in any such proceedings.

68 8. The employer may be required by the division or the commission to furnish an injured
69 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as
70 needed, for life whenever the division or the commission shall find that the injured employee
71 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The
72 director of the division shall establish a procedure whereby a claim for compensation may be
73 reactivated after settlement of such claim is completed, **unless the employee explicitly agrees**
74 **that the claim cannot be reactivated under this subsection.** The claim shall be reactivated
75 only after the claimant can show good cause for the reactivation of this claim and the claim shall
76 be made only for the payment of medical procedures involving life-threatening surgical
77 procedures or if the claimant requires the use of a new, or the modification, alteration or
78 exchange of an existing, prosthetic device. For the purpose of this subsection, "life threatening"
79 shall mean a situation or condition which, if not treated immediately, will likely result in the
80 death of the injured worker.

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

83 10. The employer shall have the right to select the licensed treating physician, surgeon,
84 chiropractic physician, or other health care provider; provided, however, that such physicians,

85 surgeons or other health care providers shall offer only those services authorized within the scope
86 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
87 apply.

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

93 (1) The patient;

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

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

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

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

99 13. (1) No hospital, physician or other health care provider, other than a hospital,
100 physician or health care provider selected by the employee at his **or her** own expense pursuant
101 to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
102 services rendered to an employee due to a work-related injury or report to any credit reporting
103 agency any failure of the employee to make such payment, when an injury covered by this
104 chapter has occurred and such hospital, physician or health care provider has received actual
105 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
106 shall be deemed received by the hospital, physician or health care provider five days after
107 mailing by certified mail by the employer or insurer to the hospital, physician or health care
108 provider.

109 (2) The notice shall include:

110 (a) The name of the employer;

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

112 (c) The name of the employee receiving the services;

113 (d) The general nature of the injury, if known; and

114 (e) Where a claim has been filed, the claim number, if known.

115 (3) When an injury is found to be noncompensable under this chapter, the hospital,
116 physician or other health care provider shall be entitled to pursue the employee for any unpaid
117 portion of the fee or other charges for authorized services provided to the employee. Any
118 applicable statute of limitations for an action for such fees or other charges shall be tolled from
119 the time notice is given to the division by a hospital, physician or other health care provider
120 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in

121 regard to the injury which is the basis of such services is made, or in the event there is an appeal
122 to the labor and industrial relations commission, until a decision is rendered by that commission.

123 (4) If a hospital, physician or other health care provider or a debt collector on behalf of
124 such hospital, physician or other health care provider pursues any action to collect from an
125 employee after such notice is properly given, the employee shall have a cause of action against
126 the hospital, physician or other health care provider for actual damages sustained plus up to one
127 thousand dollars in additional damages, costs and reasonable attorney's fees.

128 (5) If an employer or insurer fails to make payment for authorized services provided to
129 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
130 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
131 section with a dispute against the employer or insurer for any fees or other charges for services
132 provided.

133 (6) A hospital, physician or other health care provider whose services have been
134 authorized in advance by the employer or insurer may give notice to the division of any claim
135 for fees or other charges for services provided for a work-related injury that is covered by this
136 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where
137 such notice has been filed, the administrative law judge may order direct payment from the
138 proceeds of any settlement or award to the hospital, physician or other health care provider for
139 such fees as are determined by the division. The notice shall be on a form prescribed by the
140 division.

141 14. The employer may allow or require an employee to use any of the employee's
142 accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment,
143 physical rehabilitation, or medical evaluations during work time. The intent of this subsection
144 is to specifically supercede and abrogate any case law that contradicts the express language of
145 this section.

287.170. 1. For temporary total disability the employer shall pay compensation for not
2 more than four hundred weeks during the continuance of such disability at the weekly rate of
3 compensation in effect under this section on the date of the injury for which compensation is
4 being made. The amount of such compensation shall be computed as follows:

5 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
6 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
7 the injured employee's average weekly earnings as of the date of the injury; provided that the
8 weekly compensation paid under this subdivision shall not exceed an amount equal to seventy
9 percent of the state average weekly wage, as such wage is determined by the division of
10 employment security, as of the July first immediately preceding the date of injury;

11 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
12 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
13 the injured employee's average weekly earnings as of the date of the injury; provided that the
14 weekly compensation paid under this subdivision shall not exceed an amount equal to
15 seventy-five percent of the state average weekly wage, as such wage is determined by the
16 division of employment security, as of the July first immediately preceding the date of injury;

17 (3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991,
18 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the
19 injured employee's average weekly earnings as of the date of the injury; provided that the weekly
20 compensation paid under this subdivision shall not exceed an amount equal to one hundred
21 percent of the state average weekly wage;

22 (4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall
23 be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly
24 earnings as of the date of the injury; provided that the weekly compensation paid under this
25 subdivision shall not exceed an amount equal to one hundred five percent of the state average
26 weekly wage;

27 (5) For all injuries occurring on or after September 28, 1981, the weekly compensation
28 shall in no event be less than forty dollars per week.

29 2. Temporary total disability payments shall be made to the claimant by check or other
30 negotiable instruments approved by the director which will not result in delay in payment and
31 shall be forwarded directly to the claimant without intervention, or, when requested, to claimant's
32 attorney if represented, except as provided in section 454.517, by any other party except by order
33 of the division of workers' compensation.

34 3. An employee is disqualified from receiving temporary total disability during any
35 period of time in which the claimant applies and receives unemployment compensation.

36 4. If the employee is terminated from post-injury employment based upon the employee's
37 post-injury misconduct, neither temporary total disability nor temporary partial disability benefits
38 under this section or section 287.180 are payable. As used in this section, the phrase "post-injury
39 misconduct" shall not include absence from the workplace due to an injury unless the employee
40 is capable of working with restrictions, as certified by a physician.

41 **5. If an employee voluntarily separates from employment with an employer at a**
42 **time when the employer had work available for the employee that was in compliance with**
43 **any medical restriction imposed upon the employee as a result of the injury that is the**
44 **subject of a claim for benefits under this chapter, neither temporary total disability nor**
45 **temporary partial disability benefits available under this section or section 287.180 shall**
46 **be payable.**

287.280. 1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure their entire liability under the workers' compensation law; and may insure in whole or in part their employer liability, under a policy of insurance or a self-insurance plan, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability to do so. If an employer or group of employers have qualified to self-insure their liability under this chapter, the division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and intentionally violating the provisions of this chapter with intent to defraud their employees of their right to compensation, suspend or revoke the right of the employer or group of employers to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee or his **or her** dependents may elect after the injury either to bring an action against such employer or group of employers to recover damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of a fellow servant, or that the employee had assumed the risk of the injury or death, or that the injury or death was caused to any degree by the negligence of the employee; or to recover under this chapter with the compensation payments commuted and immediately payable; or, if the employee elects to do so, he or she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 7 of section 287.220. If the employer or group of employers are carrying their own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the employer or group of employers to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but the employer or group of employers may carry their own risk for any excess liability. When a group of employers enter into an agreement to pool their liabilities under this chapter, individual members will not be required to qualify as individual self-insurers.

2. Groups of employers qualified to insure their liability pursuant to chapter 537 or this chapter shall utilize a uniform experience rating plan promulgated by an approved advisory organization. Such groups shall develop experience ratings for their members based on the plan. Nothing in this section shall relieve an employer from remitting, without any charge to the employer, the employer's claims history to an approved advisory organization.

3. For every entity qualified to group self-insure their liability pursuant to this chapter or chapter 537, each entity shall not authorize total discounts for any individual member

37 exceeding twenty-five percent beginning January 1, 1999. All discounts shall be based on
38 objective quantitative factors and applied uniformly to all trust members.

39 4. Any group of employers that have qualified to self-insure their liability pursuant to
40 this chapter shall file with the division premium rates, based on pure premium rate data, adjusted
41 for loss development and loss trending as filed by the advisory organization with the department
42 of insurance, financial institutions and professional registration pursuant to section 287.975, plus
43 any estimated expenses and other factors or based on average rate classifications calculated by
44 the department of insurance, financial institutions and professional registration as taken from the
45 premium rates filed by the twenty insurance companies providing the greatest volume of workers'
46 compensation insurance coverage in this state. The rate is inadequate if funds equal to the full
47 ultimate cost of anticipated losses and loss adjustment expenses are not produced when the
48 prospective loss costs are applied to anticipated payrolls. The provisions of this subsection shall
49 not apply to those political subdivisions of this state that have qualified to self-insure their
50 liability pursuant to this chapter as authorized by section 537.620 on an assessment plan. Any
51 such group may file with the division a composite rate for all coverages provided under that
52 section.

53 5. **When considering applications for new trust self-insurers, as described under**
54 **8 CSR 50-3.010, the division shall require proof of payment by each member of not less**
55 **than twenty-five percent of the estimated annual premium; except that, for new members**
56 **who wish to join an existing trust self-insurer during the policy year rather than at the**
57 **beginning of the policy year, the division shall require proof of payment of the lesser of the**
58 **estimated premium of three months or the estimated premium for the balance of the policy**
59 **year.**

60 6. **Self-insured trusts, as described under 8 CSR 50-3.010, may invest surplus**
61 **moneys from a prior trust year not needed for current obligations. Notwithstanding any**
62 **provision of law to the contrary, upon approval by the division, a self-insured trust may**
63 **invest up to one hundred percent of surplus moneys in securities designated by the state**
64 **treasurer as acceptable collateral to secure state deposits under section 30.270.**

65 7. Any finding or determination made by the division under this section may be reviewed
66 as provided in sections 287.470 and 287.480.

67 ~~[6-]~~ 8. No rule or portion of a rule promulgated under the authority of this section shall
68 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

69 ~~[7-]~~ 9. Any records submitted pursuant to this section, and pursuant to any rule
70 promulgated by the division pursuant to this section, shall be considered confidential and not
71 subject to chapter 610. Any party to a workers' compensation case involving the party that

72 submitted the records shall be able to subpoena the records for use in a workers' compensation
73 case, if the information is otherwise relevant.

287.780. No employer or agent shall discharge or ~~[in any way]~~ discriminate against any
2 employee for exercising any of his **or her** rights under this chapter **when the exercising of such**
3 **rights is the motivating factor in the discharge or discrimination.** Any employee who has
4 been discharged or discriminated against **in such manner** shall have a civil action for damages
5 against his **or her** employer. **For purposes of this section, "motivating factor" shall mean**
6 **that the employee's exercise of his or her rights under this chapter actually played a role**
7 **in the discharge or discrimination and had a determinative influence on the discharge or**
8 **discrimination.**

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