

SECOND REGULAR SESSION

HOUSE BILL NO. 2135

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VOSS.

3335H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.120 and 287.140, RSMo, and to enact in lieu thereof two 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Section A. Sections 287.120 and 287.140, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.120 and 287.140, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for
3 personal injury or death of the employee by accident or occupational disease arising out of
4 and in the course of the employee's employment. Any employee of such employer shall not
5 be liable for any injury or death for which compensation is recoverable under this chapter and
6 every employer and employees of such employer shall be released from all other liability
7 whatsoever, whether to the employee or any other person, except that an employee shall not
8 be released from liability for injury or death if the employee engaged in an affirmative
9 negligent act that purposefully and dangerously caused or increased the risk of injury. The
10 term "accident" as used in this section shall include, but not be limited to, injury or death of
11 the employee caused by the unprovoked violence or assault against the employee by any
12 person.

13 2. The rights and remedies herein granted to an employee shall exclude all other
14 rights and remedies of the employee, the employee's spouse, parents, personal
15 representatives, dependents, heirs or next kin, at common law or otherwise, on account of
16 such injury or death by accident or occupational disease, except such rights and remedies as
17 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.

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

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

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

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

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

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

49 (4) Any positive test result for a nonprescribed controlled drug, **marijuana**, or the
50 metabolites of such drug from an employee shall give rise to a rebuttable presumption, which
51 may be rebutted by a preponderance of evidence, that the tested nonprescribed controlled
52 drug **or marijuana** was in the employee's system at the time of the accident or injury and that
53 the injury was sustained in conjunction with the use of the tested nonprescribed controlled
54 drug if:

55 (a) The initial testing was administered within twenty-four hours of the accident or
56 injury;

57 (b) Notice was given to the employee of the test results within fourteen calendar days
58 of the insurer or group self-insurer receiving actual notice of the confirmatory test results;

59 (c) The employee was given an opportunity to perform a second test upon the original
60 sample; and

61 (d) The initial or any subsequent testing that forms the basis of the presumption was
62 confirmed by mass spectrometry using generally accepted medical or forensic testing
63 procedures.

64 **(5) The provisions of this subsection are subject to Article XIV, Section 1 of the**
65 **Constitution of the state of Missouri relating to medical use of marijuana and the**
66 **nondiscrimination provision of subdivision (15) of subsection 7 of Article XIV, Section 1**
67 **of the Constitution of the state of Missouri.**

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

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

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

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

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

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

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

287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

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

3. All fees and charges under this chapter shall be fair and reasonable, shall be subject to regulation by the division or the commission, or the board of rehabilitation in rehabilitation cases. A health care provider shall not charge a fee for treatment and care which is governed by the provisions of this chapter greater than the usual and customary fee the provider receives for the same treatment or service when the payor for such treatment or service is a private individual or a private health insurance carrier. The division or the commission, or the

38 board of rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and
39 determine all disputes as to such charges. A health care provider is bound by the
40 determination upon the reasonableness of health care bills.

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

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

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

53

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

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

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

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

70 8. The employer may be required by the division or the commission to furnish an
71 injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or
72 braces, as needed, for life whenever the division or the commission shall find that the injured
73 employee may be partially or wholly relieved of the effects of a permanent injury by the use
74 thereof. The director of the division shall establish a procedure whereby a claim for

75 compensation may be reactivated after settlement of such claim is completed. The claim shall
76 be reactivated only after the claimant can show good cause for the reactivation of this claim
77 and the claim shall be made only for the payment of medical procedures involving life-
78 threatening surgical procedures or if the claimant requires the use of a new, or the
79 modification, alteration or exchange of an existing, prosthetic device. For the purpose of this
80 subsection, "life threatening" shall mean a situation or condition which, if not treated
81 immediately, will likely result in the death of the injured worker.

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

84 10. The employer shall have the right to select the licensed treating physician,
85 surgeon, chiropractic physician, or other health care provider; provided, however, that such
86 physicians, surgeons or other health care providers shall offer only those services authorized
87 within the scope of their licenses. For the purpose of this subsection, subsection 2 of section
88 287.030 shall not apply.

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

94 (1) The patient;

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

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

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

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

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

110 (2) The notice shall include:

111 (a) The name of the employer;

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

148 **15. Notwithstanding any other provision of this section, an employer is not**
149 **required to reimburse or cause to be reimbursed an employee any costs associated with**
150 **the medical use of marijuana.**

✓