

SECOND REGULAR SESSION

HOUSE BILL NO. 1990

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GALLICK.

3992H.011

DANA RADEMAN MILLER, 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Section A. Section 287.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows: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 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, the employee's spouse, 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.

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 **marijuana** or a nonprescribed controlled drug 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 **marijuana** or nonprescribed
52 controlled drug was in the employee's system at the time of the accident or injury and that the
53 injury was sustained in conjunction with the use of the tested **marijuana** or nonprescribed
54 controlled 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) For the purposes of this chapter, any specific reference to marijuana or**
65 **marijuana metabolites shall not apply to medical marijuana or metabolites related to**
66 **medical marijuana that was legally prescribed by a licensed physician.**

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

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

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

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

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

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

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

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