

SECOND REGULAR SESSION

HOUSE BILL NO. 3096

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ALLEN.

5373H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 287.067 and 287.120, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation occupational disease presumptions for certain first responders, with penalty provisions.

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

Section A. Sections 287.067 and 287.120, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 287.067, 287.068, 287.069, and 287.120, to
3 read as follows:

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

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

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.

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

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

26 5. "Radiation disability" is recognized as an occupational disease for purposes of this
27 chapter and is hereby defined to be that disability due to radioactive properties or substances
28 or to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process
29 involving the use of or direct contact with radium or radioactive properties or substances or
30 the use of or direct exposure to Roentgen rays (X-rays) or ionizing radiation.

31 6. **(1)** Disease of the lungs or respiratory tract, hypotension, hypertension, or disease
32 of the heart or cardiovascular system, including carcinoma, may be recognized as
33 occupational diseases for the purposes of this chapter and are defined to be disability due
34 to exposure to smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid
35 fire department or paid police officers of a paid police department certified under chapter 590
36 if a direct causal relationship is established, or psychological stress of firefighters of a paid
37 fire department or paid peace officers of a police department who are certified under chapter
38 590 if a direct causal relationship is established.

39 **(2) Cancer or any heart-related, perivascular, or pulmonary disease or other**
40 **related condition contracted by a firefighter or fire investigator shall be presumed to be**
41 **an occupational disease, as provided under section 287.068.**

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

45 8. With regard to occupational disease due to repetitive motion, if the exposure to the
46 repetitive motion which is found to be the cause of the injury is for a period of less than three
47 months and the evidence demonstrates that the exposure to the repetitive motion with the
48 immediate prior employer was the prevailing factor in causing the injury, the prior employer
49 shall be liable for such occupational disease.

50 9. (1) (a) Posttraumatic stress disorder (PTSD), as described in the Diagnostic and
51 Statistical Manual of Mental Health Disorders, Fifth Edition, published by the American

52 Psychiatric Association, (DSM-5) is recognized as a compensable occupational disease for
53 purposes of this chapter when diagnosed in a first responder, as that term is defined under
54 section 67.145.

55 (b) Benefits payable to a first responder under this section shall not require a physical
56 injury to the first responder, and are not subject to any preexisting PTSD.

57 (c) Benefits payable to a first responder under this section are compensable only if
58 demonstrated by clear and convincing evidence that PTSD has resulted from the course and
59 scope of employment, and the first responder is examined and diagnosed with PTSD by an
60 authorized treating physician, due to the first responder experiencing one of the following
61 qualifying events:

62 a. Seeing for oneself a deceased minor;

63 b. Witnessing directly the death of a minor;

64 c. Witnessing directly the injury to a minor who subsequently died prior to or upon
65 arrival at a hospital emergency department, participating in the physical treatment of, or
66 manually transporting, an injured minor who subsequently died prior to or upon arrival at a
67 hospital emergency department;

68 d. Seeing for oneself a person who has suffered serious physical injury of a nature
69 that shocks the conscience;

70 e. Witnessing directly a death, including suicide, due to serious physical injury; or
71 homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and
72 negligence;

73 f. Witnessing directly an injury that results in death, if the person suffered serious
74 physical injury that shocks the conscience;

75 g. Participating in the physical treatment of an injury, including attempted suicide, or
76 manually transporting an injured person who suffered serious physical injury, if the injured
77 person subsequently died prior to or upon arrival at a hospital emergency department; or

78 h. Involvement in an event that caused or may have caused serious injury or harm to
79 the first responder or had the potential to cause the death of the first responder, whether
80 accidental or by an intentional act of another individual.

81 (2) The time for notice of injury or death in cases of compensable PTSD under this
82 section is measured from exposure to one of the qualifying stressors listed in the DSM-5
83 criteria, or the diagnosis of the disorder, whichever is later. Any claim for compensation for
84 such injury shall be properly noticed within fifty-two weeks after the qualifying exposure, or
85 the diagnosis of the disorder, whichever is later.

287.068. 1. This section and section 287.069 shall be known and may be cited as
2 **the "Missouri Firefighter Occupational Disease Protection Act".**

3 **2. For the purposes of this section, the following terms mean:**

4 (1) "Cancer", any condition of cancer affecting the skin or the central nervous,
5 lymphatic, digestive, hematologic, urinary, skeletal, oral, breast, testicular,
6 genitourinary, liver, or prostate system including, but not limited to, bladder cancer,
7 brain cancer, breast cancer, cervical cancer, chronic lymphocytic leukemia, chronic
8 myelogenous leukemia, colon cancer, esophageal cancer, invasive skin cancer or
9 melanoma, kidney cancer, liver cancer or hepatocellular carcinoma, lung cancer,
10 lymphatic or hematopoietic cancer or lymphoma, mesothelioma, multiple myeloma,
11 non-Hodgkin's lymphoma, oral cavity and pharyngeal cancer, ovarian cancer, prostate
12 cancer, rectal cancer, testicular cancer, thyroid cancer, pancreatic cancer, and any other
13 condition of cancer that may be caused by or result from exposure to extreme heat,
14 inhalation, chemical fumes, smoke, particles, toxic gases, ingestion, radiation, or known,
15 suspected, or unknown carcinogens;

16 (2) "Fire investigator", a person who is or was employed full-time by a
17 municipality, fire protection district, or state agency and who is trained in and
18 responsible for determining the origin, cause, and development of a fire or explosion.
19 This term shall include a retired fire investigator;

20 (3) "Firefighter", any person who is a paid or retired firefighter or a volunteer
21 firefighter employed by a political subdivision as an employer as defined under this
22 chapter or otherwise serving as a member or officer of a fire department, fire protection
23 district, or other firefighting organization of a political subdivision who is or was
24 regularly assigned to hazardous duty including, but not limited to, fire suppression,
25 emergency medical response, hazardous materials response, or technical rescue
26 operations;

27 (4) "Regularly assigned to hazardous duty", assigned to duty that requires the
28 firefighter or fire investigator to be involved in fire suppression, fire investigation,
29 emergency medical response, hazardous materials response, technical rescue, or other
30 duties that expose the individual to smoke, carcinogens, toxic substances, or other
31 occupational hazards inherent to firefighting or fire investigation;

32 (5) "Volunteer firefighter", a person having principal employment other than as
33 a firefighter but who regularly serves or served a fire department, fire protection
34 district, or other firefighting organization of a political subdivision for the purpose of
35 the prevention or control of fire without regular salary or wages, but may receive
36 nominal compensation, stipends, or reimbursement for services rendered. This term
37 shall include a retired volunteer firefighter.

38 3. Cancer contracted by a firefighter or fire investigator shall be presumed to be
39 an occupational disease if:

40 **(1) The firefighter or fire investigator successfully passed a physical examination**
41 **before employment and the examination did not indicate evidence of cancer. In the case**
42 **of a firefighter, the physical examination received under this subdivision shall be**
43 **reasonably aligned with the National Fire Protection Association Standard on**
44 **Comprehensive Occupational Medical Program for Fire Departments (NFPA 1582);**

45 **(2) The firefighter or fire investigator was regularly assigned to hazardous duty**
46 **for a minimum of five years;**

47 **(3) The firefighter or fire investigator was exposed to an agent, whether known**
48 **or unknown, classified by the International Agency for Research on Cancer, or any**
49 **successor organization, as a group 2 or 2A carcinogen or classified as a cancer-causing**
50 **agent by the American Cancer Society, the American Association for Cancer Research,**
51 **the Agency for Healthcare Research Quality, the American Society of Clinical Oncology,**
52 **the National Institute for Occupational Safety and Health, or the United States National**
53 **Cancer Institute; and**

54 **(4) The cancer diagnosis occurred during the firefighter's or fire investigator's**
55 **employment or within ten years following the last date of employment as a firefighter or**
56 **fire investigator. The statute of limitations for an occupational disease as provided**
57 **under this chapter shall begin to run from the date of diagnosis or death, whichever**
58 **occurs first, provided the diagnosis or death occurs within the ten-year period under**
59 **this subdivision.**

60 **4. For the purpose of calculating the five-year period under subdivision (2) of**
61 **subsection 3 of this section:**

62 **(1) Time spent in training, whether paid or unpaid, shall be counted toward the**
63 **five-year minimum requirement; and**

64 **(2) Service with multiple fire departments or fire districts may be aggregated to**
65 **meet the five-year requirement, provided the firefighter or fire investigator submits**
66 **appropriate documentation.**

67 **5. Notwithstanding subsection 3 of this section, firefighters and fire investigators**
68 **are not required to identify specific carcinogens to which they were exposed or to prove**
69 **a direct causal link between a known carcinogen and the particular cancer diagnosed**
70 **beyond establishing that the firefighter or fire investigator was exposed to known**
71 **carcinogens during his or her service or period of employment.**

72 **6. Any heart-related, perivascular, or pulmonary injury or death of a firefighter**
73 **or fire investigator shall be presumed to be an occupational disease if:**

74 **(1) The firefighter or fire investigator passed a physical examination before**
75 **employment that did not indicate evidence of a heart-related, perivascular, or**
76 **pulmonary disease, condition, or injury. In the case of a firefighter, the physical**

77 examination received under this subdivision shall be reasonably aligned with the
78 National Fire Protection Association Standard on Comprehensive Occupational Medical
79 Program for Fire Departments (NFPA 1582); and

80 (2) The firefighter or fire investigator was exposed to a documented, work-
81 related incident and the heart-related, perivascular, or pulmonary injury or death
82 occurred within twenty-four hours after exposure and was reasonably related to the
83 exposure.

84 7. The presumptions provided in this section may be rebutted only by clear and
85 convincing evidence establishing that a nonoccupational cause was the independent,
86 primary, and exclusive cause of the cancer, heart-related condition, perivascular
87 condition, or pulmonary condition, such that the condition would have occurred in the
88 absence of any occupational exposure or work-related event encountered in the course
89 of the firefighter's or fire investigator's employment duties.

90 8. The burden of proof to rebut the presumptions established in this section shall
91 be on the employer or the employer's workers' compensation insurance carrier.

92 9. This section shall apply to all firefighters and fire inspectors, as defined under
93 this section, of all public, private, and volunteer fire departments, fire protection
94 districts, or other firefighting organizations of all political subdivisions and any other
95 political subdivisions employing fire investigators.

96 10. The section shall apply only to claims filed on or after the effective date of
97 this section.

98 11. The provisions of this section shall not apply retroactively to claims that were
99 finally adjudicated prior to the effective date of this act.

100 12. Nothing in this section shall be construed to limit or restrict any other
101 benefits available to firefighters or fire investigators under this chapter or any other
102 provision of law.

287.069. 1. Insurance carriers, self-insured employers granted authority by the
2 division to self-insure, third-party administrators, and workers' compensation pools
3 providing coverage for firefighters and fire investigators shall compile and report to the
4 division claim and claim reserve information for cancer-related claims filed by or on
5 behalf of firefighters and fire investigators.

6 2. The division shall compile and make available to the department of commerce
7 and insurance, department of public safety, insurance carriers, and recognized rating
8 organizations authorized under this chapter the claim-related information.

9 3. Cancer-related claim and claim reserve information to be reported shall
10 include:

11 (1) The type of cancer diagnosed;

- 12 **(2) The date of diagnosis;**
13 **(3) The date the claim was filed;**
14 **(4) The date the claim was accepted or denied;**
15 **(5) The basis for denial, if denied;**
16 **(6) The total amount paid or reserved for medical benefits;**
17 **(7) The total amount paid or reserved for indemnity benefits;**
18 **(8) The current status of the claim; and**
19 **(9) Any other information required or deemed necessary by the division to fulfill**
20 **the requirements under this section.**

21 **4. The information required to be reported to the division under the provisions**
22 **of subsection 3 of this section shall be considered a closed filing, shall be confidential,**
23 **and shall not be subject to the requirements of chapter 610.**

24 **5. The division shall prepare and publish an annual report summarizing the data**
25 **collected under subsection 3 of this section regarding presumed cancer claims under**
26 **section 287.068. Such report shall include, at minimum, the following information:**

- 27 **(1) The number of claims filed during the preceding fiscal year;**
28 **(2) The number of claims accepted and paid during the preceding fiscal year;**
29 **(3) The number of claims denied during the preceding fiscal year;**
30 **(4) The number of active or pending claims as of the date of the report; and**
31 **(5) The cost related to claims described under subsection 3 of this section.**

32 **6. The division shall publish and submit the report required under subsection 1**
33 **of this section before August 28, 2028, and an updated report every two years thereafter,**
34 **to each of the following:**

- 35 **(1) The speaker and the minority leader of the house of representatives;**
36 **(2) The president pro tempore and the minority leader of the senate;**
37 **(3) The Missouri Association of Fire Chiefs or its successor organization;**
38 **(4) The Fire Fighters Association of Missouri or its successor organization; and**
39 **(5) The Missouri Municipal League or its successor organization.**

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.

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 or nonprescribed controlled drugs in
34 the workplace, the compensation and death benefit provided for herein shall be reduced fifty
35 percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed
36 controlled drugs.

37 (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of
38 the employer's rule or policy is the proximate cause of the injury, then the benefits or
39 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 or a nonprescribed controlled substance, as
45 defined by section 195.010, at the request of the employer shall result in the forfeiture of
46 benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a

47 nonprescribed controlled substance by the claimant or if the employer's policy clearly
48 authorizes post-injury testing.

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

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

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

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

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

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

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

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

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

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

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

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

87 **11. (1) An employer or employer's insurance carrier shall file an answer or**
88 **responsive pleading to a claim under the provisions of section 287.068 within thirty days**
89 **of receiving notice from the division acknowledging receipt of the claim. Failure to**
90 **timely respond shall create a rebuttable presumption that the delay or rejection was**
91 **unreasonable. The question of delay or rejection and the reasonableness of the cause**
92 **shall be determined by an administrative law judge or the commission in accordance**
93 **with the facts.**

94 **(2) If an employer or insurance carrier unreasonably rejects or delays a claim**
95 **for benefits under the provisions of section 287.068 that qualifies for presumptive**
96 **coverage, the employer or insurance carrier shall be assessed a penalty equal to five**
97 **times the amount of benefits that were unreasonably rejected or delayed, up to a**
98 **maximum amount of fifty thousand dollars.**

99 **(3) The penalty assessed under this subsection shall be paid to the claimant in**
100 **addition to any other benefits or compensation awarded.**

101 **(4) The provisions of this subsection shall apply to all claims filed on or after the**
102 **effective date of section 287.068.**

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