

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 615
98TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 23, 2015, with recommendation that the Senate Committee Substitute do pass.

1507S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 287.040, 287.090, 287.140, 287.955, 287.957, and 287.975, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation, with an existing penalty provision.

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

Section A. Sections 287.040, 287.090, 287.140, 287.955, 287.957, and
2 287.975, RSMo, are repealed and seven new sections enacted in lieu thereof, to
3 be known as sections 287.040, 287.090, 287.140, 287.221, 287.955, 287.957, and
4 287.975, to read as follows:

287.040. 1. Any person who has work done under contract on or about his
2 premises which is an operation of the usual business which he there carries on
3 shall be deemed an employer and shall be liable under this chapter to such
4 contractor, his subcontractors, and their employees, when injured or killed on or
5 about the premises of the employer while doing work which is in the usual course
6 of his business.

7 2. The provisions of this section shall not apply to the owner of premises
8 upon which improvements are being erected, demolished, altered or repaired by
9 an independent contractor but such independent contractor shall be deemed to
10 be the employer of the employees of his subcontractors and their subcontractors
11 when employed on or about the premises where the principal contractor is doing
12 work.

13 3. In all cases mentioned in the preceding subsections, the immediate
14 contractor or subcontractor shall be liable as an employer of the employees of his
15 subcontractors. All persons so liable may be made parties to the proceedings on

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 the application of any party. The liability of the immediate employer shall be
17 primary, and that of the others secondary in their order, and any compensation
18 paid by those secondarily liable may be recovered from those primarily liable,
19 with attorney's fees and expenses of the suit. Such recovery may be had on
20 motion in the original proceedings. No such employer shall be liable as in this
21 section provided, if the employee was insured by his immediate or any
22 intermediate employer.

23 4. The provisions of this section shall not apply to:

24 **(1)** The relationship between a for-hire motor carrier operating within a
25 commercial zone as defined in section 390.020 or 390.041 or operating under a
26 certificate issued by the Missouri department of transportation or by the United
27 States Department of Transportation, or any of its subagencies, and an owner, as
28 defined in subdivision [(43)] **(42)** of section 301.010, and operator of a motor
29 vehicle; or

30 **(2) An independent contractor providing application of**
31 **agricultural materials used in crop dusting, seeding, spraying, or**
32 **fertilizing operations from an aircraft.**

287.090. 1. This chapter shall not apply to:

2 (1) Employment of farm labor, domestic servants in a private home,
3 including family chauffeurs, or occasional labor performed for and related to a
4 private household;

5 (2) Qualified real estate agents and direct sellers as those terms are
6 defined in Section 3508 of Title 26 United States Code;

7 (3) Employment where the person employed is an inmate confined in a
8 state prison, penitentiary or county or municipal jail, or a patient or resident in
9 a state mental health facility, and the labor or services of such inmate, patient,
10 or resident are exclusively on behalf of the state, county or municipality having
11 custody of said inmate, patient, or resident. Nothing in this subdivision is
12 intended to exempt employment where the inmate, patient or resident was hired
13 by a state, county or municipal government agency after direct competition with
14 persons who are not inmates, patients or residents and the compensation for the
15 position of employment is not contingent upon or affected by the worker's status
16 as an inmate, patient or resident;

17 (4) Except as provided in section 287.243, volunteers of a tax-exempt
18 organization which operates under the standards of Section 501(c)(3) or **Section**
19 **501(c)(19)** of the federal Internal Revenue Code, where such volunteers are not

20 paid wages, but provide services purely on a charitable and voluntary basis;

21 (5) Persons providing services as adjudicators, sports officials, or contest
22 workers for interscholastic activities programs or similar amateur youth programs
23 who are not otherwise employed by the sponsoring school, association of schools
24 or nonprofit tax-exempt organization sponsoring the amateur youth programs.

25 2. Any employer exempted from this chapter as to the employer or as to
26 any class of employees of the employer pursuant to the provisions of subdivision
27 (3) of subsection 1 of section 287.030 or pursuant to subsection 1 of this section
28 may elect coverage as to the employer or as to the class of employees of that
29 employer pursuant to this chapter by purchasing and accepting a valid workers'
30 compensation insurance policy or endorsement, or by written notice to the group
31 self-insurer of which the employer is a member. The election shall take effect on
32 the effective date of the workers' compensation insurance policy or endorsement,
33 or by written notice to the group self-insurer of which the employer is a member,
34 and continue while such policy or endorsement remains in effect or until further
35 written notice to the group self-insurer of which the employer is a member. Any
36 such exempt employer or employer with an exempt class of employees may
37 withdraw such election by the cancellation or nonrenewal of the workers'
38 compensation insurance policy or endorsement, or by written notice to the group
39 self-insurer of which the employer is a member. In the event the employer is
40 electing out of coverage as to the employer, the cancellation shall take effect on
41 the later date of the cancellation of the policy or the filing of notice pursuant to
42 subsection 3 of this section.

43 3. Any insurance company authorized to write insurance under the
44 provisions of this chapter in this state shall file with the division a memorandum
45 on a form prescribed by the division of any workers' compensation policy issued
46 to any employer and of any renewal or cancellation thereof.

47 4. The mandatory coverage sections of this chapter shall not apply to the
48 employment of any member of a family owning a family farm corporation as
49 defined in section 350.010 or to the employment of any salaried officer of a family
50 farm corporation organized pursuant to the laws of this state, but such family
51 members and officers of such family farm corporations may be covered under a
52 policy of workers' compensation insurance if approved by a resolution of the board
53 of directors. Nothing in this subsection shall be construed to apply to any other
54 type of corporation other than a family farm corporation.

55 5. A corporation may withdraw from the provisions of this chapter, when

56 there are no more than two owners of the corporation who are also the only
57 employees of the corporation, by filing with the division notice of election to be
58 withdrawn. The election shall take effect and continue from the date of filing
59 with the division by the corporation of the notice of withdrawal from liability
60 under this chapter. Any corporation making such an election may withdraw its
61 election by filing with the division a notice to withdraw the election, which shall
62 take effect thirty days after the date of the filing, or at such later date as may be
63 specified in the notice of withdrawal.

287.140. 1. In addition to all other compensation paid to the employee
2 under this section, the employee shall receive and the employer shall provide
3 such medical, surgical, chiropractic, and hospital treatment, including nursing,
4 custodial, ambulance and medicines, as may reasonably be required after the
5 injury or disability, to cure and relieve from the effects of the injury. If the
6 employee desires, he shall have the right to select his own physician, surgeon, or
7 other such requirement at his own expense. Where the requirements are
8 furnished by a public hospital or other institution, payment therefor shall be
9 made to the proper authorities. Regardless of whether the health care provider
10 is selected by the employer or is selected by the employee at the employee's
11 expense, the health care provider shall have the affirmative duty to communicate
12 fully with the employee regarding the nature of the employee's injury and
13 recommended treatment exclusive of any evaluation for a permanent disability
14 rating. Failure to perform such duty to communicate shall constitute a
15 disciplinary violation by the provider subject to the provisions of chapter
16 620. When an employee is required to submit to medical examinations or
17 necessary medical treatment at a place outside of the local or metropolitan area
18 from the employee's principal place of employment, the employer or its insurer
19 shall advance or reimburse the employee for all necessary and reasonable
20 expenses; except that an injured employee who resides outside the state of
21 Missouri and who is employed by an employer located in Missouri shall have the
22 option of selecting the location of services provided in this section either at a
23 location within one hundred miles of the injured employee's residence, place of
24 injury or place of hire by the employer. The choice of provider within the location
25 selected shall continue to be made by the employer. In case of a medical
26 examination if a dispute arises as to what expenses shall be paid by the
27 employer, the matter shall be presented to the legal advisor, the administrative
28 law judge or the commission, who shall set the sum to be paid and same shall be

29 paid by the employer prior to the medical examination. In no event, however,
30 shall the employer or its insurer be required to pay transportation costs for a
31 greater distance than two hundred fifty miles each way from place of treatment.

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

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

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

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

59 (2) One year from the date the first notice of dispute of the medical charge
60 was received by the health care provider if such services were rendered after July
61 1, 2013.

62 Notice shall be presumed to occur no later than five business days after
63 [transmission by certified United States mail] **mailing. For the purposes of**
64 **this section, the phrase "notice of dispute" shall include, but not be**

65 **limited to, any writing that evidences that the payment is considered**
66 **to be the full payment of the fee or charge.**

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

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

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

83 8. The employer may be required by the division or the commission to
84 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic
85 joints, or eyes, or braces, as needed, for life whenever the division or the
86 commission shall find that the injured employee may be partially or wholly
87 relieved of the effects of a permanent injury by the use thereof. The director of
88 the division shall establish a procedure whereby a claim for compensation may
89 be reactivated after settlement of such claim is completed. The claim shall be
90 reactivated only after the claimant can show good cause for the reactivation of
91 this claim and the claim shall be made only for the payment of medical
92 procedures involving life-threatening surgical procedures or if the claimant
93 requires the use of a new, or the modification, alteration or exchange of an
94 existing, prosthetic device. For the purpose of this subsection, "life threatening"
95 shall mean a situation or condition which, if not treated immediately, will likely
96 result in the death of the injured worker.

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

100 10. The employer shall have the right to select the licensed treating

101 physician, surgeon, chiropractic physician, or other health care provider;
102 provided, however, that such physicians, surgeons or other health care providers
103 shall offer only those services authorized within the scope of their licenses. For
104 the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

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

- 111 (1) The patient;
112 (2) The employer of the patient with workers' compensation liability for
113 the injury or disease being treated;
114 (3) The workers' compensation insurer of such employer; and
115 (4) The workers' compensation adjusting company for such insurer.

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

117 13. (1) No hospital, physician or other health care provider, other than
118 a hospital, physician or health care provider selected by the employee at his own
119 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
120 any fee or any portion of a fee for services rendered to an employee due to a
121 work-related injury or report to any credit reporting agency any failure of the
122 employee to make such payment, when an injury covered by this chapter has
123 occurred and such hospital, physician or health care provider has received actual
124 notice given in writing by the employee, the employer or the employer's
125 insurer. Actual notice shall be deemed received by the hospital, physician or
126 health care provider five days after mailing [by certified mail] by the employer
127 or insurer to the hospital, physician or health care provider.

128 (2) The notice shall include:

- 129 (a) The name of the employer;
130 (b) The name of the insurer, if known;
131 (c) The name of the employee receiving the services;
132 (d) The general nature of the injury, if known; and
133 (e) Where a claim has been filed, the claim number, if known.

134 (3) When an injury is found to be noncompensable under this chapter, the
135 hospital, physician or other health care provider shall be entitled to pursue the
136 employee for any unpaid portion of the fee or other charges for authorized

137 services provided to the employee. Any applicable statute of limitations for an
138 action for such fees or other charges shall be tolled from the time notice is given
139 to the division by a hospital, physician or other health care provider pursuant to
140 subdivision (6) of this subsection, until a determination of noncompensability in
141 regard to the injury which is the basis of such services is made, or in the event
142 there is an appeal to the labor and industrial relations commission, until a
143 decision is rendered by that commission.

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

150 (5) If an employer or insurer fails to make payment for authorized
151 services provided to the employee by a hospital, physician or other health care
152 provider pursuant to this chapter, the hospital, physician or other health care
153 provider may proceed pursuant to subsection 4 of this section with a dispute
154 against the employer or insurer for any fees or other charges for services
155 provided.

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

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

**287.221. Notwithstanding the provisions of subsection 15 of
2 section 287.220 to the contrary, the division shall be authorized to pay
3 second injury fund liabilities for physical rehabilitation payments**

4 **under subsection 3 of section 287.141, medical expenses under**
5 **subsection 7 of section 287.220 incurred after a temporary or final**
6 **award of future medical benefits, and wage loss benefits under**
7 **subsection 11 of section 287.220.**

287.955. 1. Every workers' compensation insurer shall adhere to a
2 uniform classification system and uniform experience rating plan filed with the
3 director by the advisory organization designated by the director and subject to his
4 disapproval.

5 2. An insurer may develop subclassifications of the uniform classification
6 system upon which a rate may be made, except that such subclassifications shall
7 be filed with the director thirty days prior to their use. The director shall
8 disapprove subclassifications if the insurer fails to demonstrate that the data
9 thereby produced can be reported consistent with the uniform statistical plan and
10 classification system.

11 3. The director shall designate an advisory organization to assist him in
12 gathering, compiling and reporting relevant statistical information. Every
13 workers' compensation insurer shall record and report its workers' compensation
14 experience to the designated advisory organization as set forth in the uniform
15 statistical plan approved by the director.

16 4. The designated advisory organization shall develop and file manual
17 rules, subject to the approval of the director, reasonably related to the recording
18 and reporting of data pursuant to the uniform statistical plan, uniform experience
19 rating plan, and the uniform classification system.

20 5. Every workers' compensation insurer shall adhere to the approved
21 manual rules and experience rating plan in writing and reporting its business.
22 No insurer shall agree with any other insurer or with the advisory organization
23 to adhere to manual rules which are not reasonably related to the recording and
24 reporting of data pursuant to the uniform classification system of the uniform
25 statistical plan.

26 6. [(1) A workers' compensation insurer may develop an individual risk
27 premium modification rating plan which prospectively modifies premium based
28 upon individual risk characteristics which are predictive of future loss. Such
29 rating plan shall be filed thirty days prior to use and may be subject to
30 disapproval by the director.

31 (2) The rating plan shall establish objective standards for measuring
32 variations in individual risks for hazards or expense or both. The rating plan

33 shall be actuarially justified and shall not result in premiums which are
34 excessive, inadequate, or unfairly discriminatory. The rating plan shall not
35 utilize factors which are duplicative of factors otherwise utilized in the
36 development of rates or premiums, including the uniform classification system
37 and the uniform experience rating plan. The premium modification factors
38 utilized under the rating plan shall be applied on a statewide basis, with no
39 premium modifications based solely upon the geographic location of the employer.

40 (3) Within thirty days of a request, the insurer shall clearly disclose to the
41 employer the individual risk characteristics which result in premium
42 modifications. However, this disclosure shall not in any way require the release
43 to the insured employer of any trade secret or proprietary information or data
44 used to derive the premium modification and that meets the definitions of, and
45 is protected by, the provisions of chapter 417.

46 (4) (a) Premium modifications [under this subsection] may be
47 determined by an underwriter assessing the individual risk characteristics and
48 applying premium credits and debits as specified under a schedule rating
49 plan. Alternatively, an insurer may utilize software or a computer risk modeling
50 system designed to identify and assess individual risk characteristics and which
51 systematically and uniformly applies premium modifications to similarly situated
52 employers.

53 [(b) Premium modifications resulting from a schedule rating plan, with
54 an underwriter determining individual risk characteristics, shall be limited to
55 plus or minus twenty-five percent. An additional ten percent credit may be given
56 for a reduction in the insurer's expenses.

57 (c) Premium modifications resulting from a risk modeling system shall be
58 limited to plus or minus fifty percent. Premium modifications resulting from a
59 risk modeling system shall be reported separately under the uniform statistical
60 plan from premium modifications resulting from a schedule rating plan.

61 (d) Premium credits or reductions shall not be removed or reduced unless
62 there is a change in the insurer, the insurer amends or withdraws the rating
63 plan, or unless there is a corresponding change in the insured employer's
64 operations or risk characteristics underlying the credit or reduction.]

287.957. The experience rating plan shall contain reasonable eligibility
2 standards, provide adequate incentives for loss prevention, and shall provide for
3 sufficient premium differentials so as to encourage safety. The uniform
4 experience rating plan shall be the exclusive means of providing prospective

5 premium adjustment based upon measurement of the loss-producing
6 characteristics of an individual insured. An insurer may submit a rating plan or
7 plans providing for retrospective premium adjustments based upon an insured's
8 past experience. Such system shall provide for retrospective adjustment of an
9 experience modification and premiums paid pursuant to such experience
10 modification where a prior reserved claim produced an experience modification
11 that varied by greater than fifty percent from the experience modification that
12 would have been established based on the settlement amount of that claim. The
13 rating plan shall prohibit an adjustment to the experience modification of an
14 employer if the total medical cost does not exceed [one thousand dollars] **twenty**
15 **percent of the current split point of primary and excess losses under**
16 **the uniform experience rating plan**, and the employer pays all of the total
17 medical costs and there is no lost time from the employment, other than the first
18 three days or less of disability under subsection 1 of section 287.160, and no claim
19 is filed. An employer opting to utilize this provision maintains an obligation to
20 report the injury under subsection 1 of section 287.380.

287.975. 1. The advisory organization shall file with the director every
2 pure premium rate, every manual of rating rules, every rating schedule and every
3 change or amendment, or modification of any of the foregoing, proposed for use
4 in this state no more than thirty days after it is distributed to members,
5 subscribers or others.

6 2. The advisory organization which makes a uniform classification system
7 for use in setting rates in this state shall collect data for two years after January
8 1, 1994, on the payroll differential between employers within the construction
9 group of code classifications, including, but not limited to, payroll costs of the
10 employer and number of hours worked by all employees of the employer engaged
11 in construction work. Such data shall be transferred to the department of
12 insurance, financial institutions and professional registration in a form prescribed
13 by the director of the department of insurance, financial institutions and
14 professional registration, and the department shall compile the data and develop
15 a formula to equalize premium rates for employers within the construction group
16 of code classifications based on such payroll differential within three years after
17 the data is submitted by the advisory organization.

18 3. The formula to equalize premium rates for employers within the
19 construction group of code classifications established under subsection 2 of this
20 section shall be the formula in effect on January 1, 1999. This subsection shall

21 become effective on January 1, 2014.

22 **4. For the purposes of calculating the premium credit under the**
23 **Missouri contracting classification premium adjustment program, an**
24 **employer within the construction group of code classifications may**
25 **submit to the advisory organization the required payroll record**
26 **information for the first, second, third, or fourth calendar quarter of**
27 **the year prior to the workers' compensation policy beginning or**
28 **renewal date, provided that the employer clearly indicates for which**
29 **quarter the payroll information is being submitted.**

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