

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 8
96TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence February 1, 2011, with recommendation that the Senate Committee Substitute do pass.

0367S.03C

TERRY L. SPIELER, Secretary.

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Section A. Section 287.120, RSMo, is repealed and one new section
2 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
2 be liable, irrespective of negligence, to furnish compensation under the provisions
3 of this chapter for personal injury or death of the employee by accident **or by**
4 **occupational disease** arising out of and in the course of the employee's
5 employment[.]. **Any employee of such employer shall not be liable for**
6 **any injury or death for which compensation is recoverable under this**
7 **chapter and every employer and employees of such employer shall be**
8 released from all other liability therefor whatsoever, whether to the employee or
9 any other person, **except that an employee shall not be released from**
10 **liability for injury or death caused by that employee's unprovoked**
11 **violence or assault against another employee.** The term "accident" as used
12 in this section shall include, but not be limited to, injury or death of the employee
13 caused by the unprovoked violence or assault against the employee by any person.

14 2. The rights and remedies herein granted to an employee shall exclude
15 all other rights and remedies of the employee, his wife, her husband, parents,
16 personal representatives, dependents, heirs or next kin, at common law or
17 otherwise, on account of such [accidental] injury or death **by accident or**
18 **occupational disease**, except such rights and remedies as are not provided for

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

19 by this chapter.

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

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

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

37 6. (1) Where the employee fails to obey any rule or policy adopted by the
38 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
39 controlled drugs in the workplace, the compensation and death benefit provided
40 for herein shall be reduced fifty percent if the injury was sustained in conjunction
41 with the use of alcohol or nonprescribed controlled drugs.

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

46 (3) The voluntary use of alcohol to the percentage of blood alcohol
47 sufficient under Missouri law to constitute legal intoxication shall give rise to a
48 rebuttable presumption that the voluntary use of alcohol under such
49 circumstances was the proximate cause of the injury. A preponderance of the
50 evidence standard shall apply to rebut such presumption. An employee's refusal
51 to take a test for alcohol or a nonprescribed controlled substance, as defined by
52 section 195.010, RSMo, at the request of the employer shall result in the
53 forfeiture of benefits under this chapter if the employer had sufficient cause to
54 suspect use of alcohol or a nonprescribed controlled substance by the claimant or

55 if the employer's policy clearly authorizes post-injury testing.

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

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

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

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

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

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

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

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