

FIRST REGULAR SESSION

SENATE BILL NO. 196

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time January 27, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1174S.011

AN ACT

To repeal sections 287.120 and 287.800, 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Section A. Sections 287.120 and 287.800, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 287.120 and 287.800, to
3 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 arising
4 out of and in the course of the employee's employment, and shall be released from
5 all other liability therefor whatsoever, whether to the employee or any other
6 person. The term "accident" as used in this section shall include, but not be
7 limited to, injury or death of the employee caused by the unprovoked violence or
8 assault against the employee by any person.

9 2. The rights and remedies herein granted to an employee shall exclude
10 all other rights and remedies of the employee, his wife, her husband, parents,
11 personal representatives, dependents, heirs or next kin, at common law or
12 otherwise, on account of such accidental injury or death, except such rights and
13 remedies as are not provided for by this chapter.

14 3. **Co-employees shall be released from liability for negligence in**
15 **performing the non-delegable duty of an employer to provide a safe**
16 **workplace when the negligence contributes to a co-employee's personal**
17 **injury or death by accident arising out of and in the course of the**
18 **injured or deceased employee's employment, unless the co-employee**

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

19 **engaged in purposeful, affirmatively, dangerous conduct.**

20 4. 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.] 5. Where the injury is caused by the failure of the employer to
25 comply 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.] 6. Where the injury is caused by the failure of the employee to use
29 safety devices where provided by the employer, or from the employee's failure to
30 obey 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.] 7. (1) Where the employee fails to obey any rule or policy adopted
38 by the employer relating to a drug-free workplace or the use of alcohol or
39 nonprescribed controlled drugs in the workplace, the compensation and death
40 benefit provided for herein shall be reduced fifty percent if the injury was
41 sustained in conjunction with the use of alcohol or nonprescribed controlled
42 drugs.

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

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

55 suspect use of alcohol or a nonprescribed controlled substance by the claimant or
56 if the employer's policy clearly authorizes post-injury testing.

57 [7.] 8. Where the employee's participation in a recreational activity or
58 program is the prevailing cause of the injury, benefits or compensation otherwise
59 payable under this chapter for death or disability shall be forfeited regardless
60 that the employer may have promoted, sponsored or supported the recreational
61 activity or program, expressly or impliedly, in whole or in part. The forfeiture of
62 benefits or compensation shall not apply when:

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

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

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

72 [8.] 9. Mental injury resulting from work-related stress does not arise out
73 of and in the course of the employment, unless it is demonstrated that the stress
74 is work related and was extraordinary and unusual. The amount of work stress
75 shall be measured by objective standards and actual events.

76 [9.] 10. A mental injury is not considered to arise out of and in the course
77 of the employment if it resulted from any disciplinary action, work evaluation, job
78 transfer, layoff, demotion, termination or any similar action taken in good faith
79 by the employer.

80 [10.] 11. The ability of a firefighter to receive benefits for psychological
81 stress under section 287.067 shall not be diminished by the provisions of
82 subsections 8 and 9 of this section.

287.800. 1. Administrative law judges, associate administrative law
2 judges, legal advisors, the labor and industrial relations commission, the division
3 of workers' compensation, and any reviewing courts shall construe the provisions
4 of this chapter strictly. **However, this subsection shall not be construed**
5 **to limit immunity for co-employees for negligence in performing the**
6 **non-delegable duty of employers to provide a safe workplace.**

7 2. Administrative law judges, associate administrative law judges, legal
8 advisors, the labor and industrial relations commission, and the division of

9 workers' compensation shall weigh the evidence impartially without giving the
10 benefit of the doubt to any party when weighing evidence and resolving factual
11 conflicts.

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Unofficial

Bill

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