

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 572

96TH GENERAL ASSEMBLY
2012

4124S.10T

AN ACT

To repeal sections 287.067, 287.120, 287.150, and 287.240, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation.

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

Section A. Sections 287.067, 287.120, 287.150, and 287.240, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 287.067, 287.120, 287.150, and 287.240, to read as follows:

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

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

17 3. An injury due to repetitive motion is recognized as an occupational

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

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

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

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

36 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or
37 disease of the heart or cardiovascular system, including carcinoma, may be
38 recognized as occupational diseases for the purposes of this chapter and are
39 defined to be disability due to exposure to smoke, gases, carcinogens, inadequate
40 oxygen, of paid firefighters of a paid fire department or paid police officers of a
41 paid police department certified under chapter 590 if a direct causal relationship
42 is established, or psychological stress of firefighters of a paid fire department if
43 a direct causal relationship is established.

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

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

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
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 if the employee engaged in an affirmative**
11 **negligent act that purposefully and dangerously caused or increased**
12 **the risk of injury.** The term "accident" as used in this section shall include,
13 but not be limited to, injury or death of the employee caused by the unprovoked
14 violence or assault against the employee by any person.

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

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

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

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

38 6. (1) Where the employee fails to obey any rule or policy adopted by the
39 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
40 controlled drugs in the workplace, the compensation and death benefit provided
41 for herein shall be reduced fifty percent if the injury was sustained in conjunction
42 with the use of alcohol or nonprescribed controlled 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, at the request of the employer shall result in the forfeiture of
54 benefits under this chapter if the employer had sufficient cause to suspect use of
55 alcohol or a nonprescribed controlled substance by the claimant or if the
56 employer's policy clearly authorizes post-injury testing.

57 7. 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. Mental injury resulting from work-related stress does not arise out of
73 and in the course of the employment, unless it is demonstrated that the stress is

74 work related and was extraordinary and unusual. The amount of work stress
75 shall be measured by objective standards and actual events.

76 9. A mental injury is not considered to arise out of and in the course of
77 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. The ability of a firefighter to receive benefits for psychological stress
81 under section 287.067 shall not be diminished by the provisions of subsections 8
82 and 9 of this section.

83 **11. Notwithstanding any provision of law to the contrary, no civil**
84 **action involving an accidental injury or death, which is filed by the**
85 **employee or any dependent of the employee against the employer or**
86 **employee of such employer, may proceed until all administrative**
87 **remedies are exhausted under this chapter. The filing of a notice of**
88 **such administrative action with the court shall toll any statute of**
89 **limitation or other time limitation regarding the civil action.**

287.150. 1. Where a third person is liable to the employee or to the
2 dependents, for the injury or death, the employer shall be subrogated to the right
3 of the employee or to the dependents against such third person, and the recovery
4 by such employer shall not be limited to the amount payable as compensation to
5 such employee or dependents, but such employer may recover any amount which
6 such employee or his dependents would have been entitled to recover. Any
7 recovery by the employer against such third person shall be apportioned between
8 the employer and employee or his dependents using the provisions of subsections
9 2 and 3 of this section.

10 2. When a third person is liable for the death of an employee and
11 compensation is paid or payable under this chapter, and recovery is had by a
12 dependent under this chapter either by judgment or settlement for the wrongful
13 death of the employee, the employer shall have a subrogation lien on any recovery
14 and shall receive or have credit for sums paid or payable under this chapter to
15 any of the dependents of the deceased employee to the extent of the settlement
16 or recovery by such dependents for the wrongful death. Recovery by the employer
17 and credit for future installments shall be computed using the provisions of
18 subsection 3 of this section relating to comparative fault of the employee.

19 3. Whenever recovery against the third person is effected by the employee
20 or his dependents, the employer shall pay from his share of the recovery a

21 proportionate share of the expenses of the recovery, including a reasonable
22 attorney fee. After the expenses and attorney fee have been paid, the balance of
23 the recovery shall be apportioned between the employer and the employee or his
24 dependents in the same ratio that the amount due the employer bears to the total
25 amount recovered if there is no finding of comparative fault on the part of the
26 employee, or the total damages determined by the trier of fact if there is a finding
27 of comparative fault on the part of the employee. Notwithstanding the foregoing
28 provision, the balance of the recovery may be divided between the employer and
29 the employee or his dependents as they may otherwise agree. Any part of the
30 recovery found to be due to the employer, the employee or his dependents shall
31 be paid forthwith and any part of the recovery paid to the employee or his
32 dependents under this section shall be treated by them as an advance payment
33 by the employer on account of any future installments of compensation in the
34 following manner:

35 (1) The total amount paid to the employee or his dependents shall be
36 treated as an advance payment if there is no finding of comparative fault on the
37 part of the employee; or

38 (2) A percentage of the amount paid to the employee or his dependents
39 equal to the percentage of fault assessed to the third person from whom recovery
40 is made shall be treated as an advance payment if there is a finding of
41 comparative fault on the part of the employee.

42 4. In any case in which an injured employee has been paid benefits from
43 the second injury fund as provided in subsection 3 of section 287.141, and
44 recovery is had against the third party liable to the employee for the injury, the
45 second injury fund shall be subrogated to the rights of the employee against said
46 third party to the extent of the payments made to him from such fund, subject to
47 provisions of subsections 2 and 3 of this section.

48 5. No construction design professional who is retained to perform
49 professional services on a construction project or any employee of a construction
50 design professional who is assisting or representing the construction design
51 professional in the performance of professional services on the site of the
52 construction project shall be liable for any injury resulting from the employer's
53 failure to comply with safety standards on a construction project for which
54 compensation is recoverable under the workers' compensation law, unless
55 responsibility for safety practices is specifically assumed by contract. The
56 immunity provided by this subsection to any construction design professional

57 shall not apply to the negligent preparation of design plans or specifications.

58 6. Any provision in any contract or subcontract, where one party is an
59 employer in the construction group of code classifications, which purports to
60 waive subrogation rights provided under this section in anticipation of a future
61 injury or death is hereby declared against public policy and void. Each contract
62 of insurance for workers' compensation shall require the insurer to diligently
63 pursue all subrogation rights of the employer and shall require the employer to
64 fully cooperate with the insurer in pursuing such recoveries, except that the
65 employer may enter into compromise agreements with an insurer in lieu of the
66 insurer pursuing subrogation against another party. The amount of any
67 subrogation recovery by an insurer shall be credited against the amount of the
68 actual paid losses in the determination of such employer's experience modification
69 factor within forty-five days of the collection of such amount.

70 **7. Notwithstanding any other provision of this section, when a**
71 **third person is liable to the employee or to the dependents of an**
72 **employee in a case when there is a finding that an occupational disease**
73 **was caused by toxic exposure and the employee or dependents are**
74 **compensated under this chapter, in no case shall the employer be**
75 **subrogated to the rights of an employee or to the dependents of an**
76 **employee against such third person when the employer caused the**
77 **occupational disease. As used in this subsection, the term "toxic**
78 **exposure" is defined to mean exposure to chemicals, dusts, particulates,**
79 **fumes, mists, fibers, solvents, vapors, radiation, or other substances or**
80 **materials that, when ingested, consumed, inhaled, or absorbed are**
81 **sufficient to cause disease, death, mutations, cancer, deformities, or**
82 **reproductive abnormalities in humans.**

 287.240. If the injury causes death, either with or without disability, the
2 compensation therefor shall be as provided in this section:

3 (1) In all cases the employer shall pay direct to the persons furnishing the
4 same the reasonable expense of the burial of the deceased employee not exceeding
5 [five] ten thousand dollars. But no person shall be entitled to compensation for
6 the burial expenses of a deceased employee unless he has furnished the same by
7 authority of the widow or widower, the nearest relative of the deceased employee
8 in the county of his death, his personal representative, or the employer, who shall
9 have the right to give the authority in the order named. All fees and charges
10 under this section shall be fair and reasonable, shall be subject to regulation by

11 the division or the commission and shall be limited to such as are fair and
12 reasonable for similar service to persons of a like standard of living. The division
13 or the commission shall also have jurisdiction to hear and determine all disputes
14 as to the charges. If the deceased employee leaves no dependents, the death
15 benefit in this subdivision provided shall be the limit of the liability of the
16 employer under this chapter on account of the death, except as herein provided
17 for burial expenses and except as provided in section 287.140; provided that in
18 all cases when the employer admits or does not deny liability for the burial
19 expense, it shall be paid within thirty days after written notice, that the service
20 has been rendered, has been delivered to the employer. The notice may be sent
21 by registered mail, return receipt requested, or may be made by personal delivery;

22 (2) The employer shall also pay to the total dependents of the employee
23 a death benefit based on the employee's average weekly earnings during the year
24 immediately preceding the injury that results in the death of the employee, as
25 provided in section 287.250. The amount of compensation for death, which shall
26 be paid in installments in the same manner that compensation is required to be
27 paid under this chapter, shall be computed as follows:

28 (a) If the injury which caused the death occurred on or after September
29 28, 1983, but before September 28, 1986, the weekly compensation shall be an
30 amount equal to sixty-six and two-thirds percent of the employee's average
31 weekly earnings during the year immediately preceding the injury; provided that
32 the weekly compensation paid under this paragraph shall not exceed an amount
33 equal to seventy percent of the state average weekly wage, as such wage is
34 determined by the division of employment security, as of the July first
35 immediately preceding the date of injury. If there is a total dependent, no death
36 benefits shall be payable to partial dependents or any other persons except as
37 provided in subdivision (1) of this section;

38 (b) If the injury which caused the death occurred on or after September
39 28, 1986, but before August 28, 1990, the weekly compensation shall be an
40 amount equal to sixty-six and two-thirds percent of the employee's average
41 weekly earnings during the year immediately preceding the injury; provided that
42 the weekly compensation paid under this paragraph shall not exceed an amount
43 equal to seventy-five percent of the state average weekly wage, as such wage is
44 determined by the division of employment security, as of the July first
45 immediately preceding the date of injury. If there is a total dependent, no death
46 benefit shall be payable to partial dependents or any other persons except as

47 provided in subdivision (1) of this section;

48 (c) If the injury which caused the death occurred on or after August 28,
49 1990, but before August 28, 1991, the weekly compensation shall be an amount
50 equal to sixty-six and two-thirds percent of the injured employee's average weekly
51 earnings as of the date of the injury; provided that the weekly compensation paid
52 under this paragraph shall not exceed an amount equal to one hundred percent
53 of the state average weekly wage;

54 (d) If the injury which caused the death occurred on or after August 28,
55 1991, the weekly compensation shall be an amount equal to sixty-six and
56 two-thirds percent of the injured employee's average weekly earnings as of the
57 date of the injury; provided that the weekly compensation paid under this
58 paragraph shall not exceed an amount equal to one hundred five percent of the
59 state average weekly wage;

60 (e) If the injury which caused the death occurred on or after September
61 28, 1981, the weekly compensation shall in no event be less than forty dollars per
62 week;

63 (3) If there are partial dependents, and no total dependents, a part of the
64 death benefit herein provided in the case of total dependents, determined by the
65 proportion of his contributions to all partial dependents by the employee at the
66 time of the injury, shall be paid by the employer to each of the dependents
67 proportionately;

68 (4) The word "dependent" as used in this chapter shall be construed to
69 mean a relative by blood or marriage of a deceased employee, who is actually
70 dependent for support, in whole or in part, upon his or her wages at the time of
71 the injury. The following persons shall be conclusively presumed to be totally
72 dependent for support upon a deceased employee, and any death benefit shall be
73 payable to them to the exclusion of other total dependents:

74 (a) A wife upon a husband with whom she lives or who is legally liable for
75 her support, and a husband upon a wife with whom he lives or who is legally
76 liable for his support; provided that on the death or remarriage of a widow or
77 widower, the death benefit shall cease unless there be other total dependents
78 entitled to any death benefits under this chapter. In the event of remarriage, a
79 lump sum payment equal in amount to the benefits due for a period of two years
80 shall be paid to the widow or widower. Thereupon the periodic death benefits
81 shall cease unless there are other total dependents entitled to any death benefit
82 under this chapter, in which event the periodic benefits to which such widow or

83 widower would have been entitled had he or she not died or remarried shall be
84 divided among such other total dependents and paid to them during their period
85 of entitlement under this chapter;

86 (b) A natural, posthumous, or adopted child or children, whether
87 legitimate or illegitimate, under the age of eighteen years, or over that age if
88 physically or mentally incapacitated from wage earning, upon the parent legally
89 liable for the support or with whom he, she, or they are living at the time of the
90 death of the parent. In case there is a wife or a husband mentally or physically
91 incapacitated from wage earning, dependent upon a wife or husband, and a child
92 or more than one child thus dependent, the death benefit shall be divided among
93 them in such proportion as may be determined by the commission after
94 considering their ages and other facts bearing on the dependency. In all other
95 cases questions of total or partial dependency shall be determined in accordance
96 with the facts at the time of the injury, and in such other cases if there is more
97 than one person wholly dependent the death benefit shall be divided equally
98 among them. The payment of death benefits to a child or other dependent as
99 provided in this paragraph shall cease when the dependent dies, attains the age
100 of eighteen years, or becomes physically and mentally capable of wage earning
101 over that age, or until twenty-two years of age if the child of the deceased is in
102 attendance and remains as a full-time student in any accredited educational
103 institution, or if at eighteen years of age the dependent child is a member of the
104 armed forces of the United States on active duty; provided, however, that such
105 dependent child shall be entitled to compensation during four years of full-time
106 attendance at a fully accredited educational institution to commence prior to
107 twenty-three years of age and immediately upon cessation of his active duty in
108 the armed forces, unless there are other total dependents entitled to the death
109 benefit under this chapter;

110 (5) The division or the commission may, in its discretion, order or award
111 the share of compensation of any such child to be paid to the parent, grandparent,
112 or other adult next of kin or conservator of the child for the latter's support,
113 maintenance and education, which order or award upon notice to the parties may
114 be modified from time to time by the commission in its discretion with respect to
115 the person to whom shall be paid the amount of the order or award remaining
116 unpaid at the time of the modification;

117 (6) The payments of compensation by the employer in accordance with the
118 order or award of the division or the commission shall discharge the employer

119 from all further obligations as to the compensation;

120 (7) All death benefits in this chapter shall be paid in installments in the
121 same manner as provided for disability compensation;

122 (8) Every employer shall keep a record of the correct names and addresses
123 of the dependents of each of his employees, and upon the death of an employee
124 by accident arising out of and in the course of his employment shall so far as
125 possible immediately furnish the division with such names and addresses;

126 (9) Dependents receiving death benefits under the provisions of this
127 chapter shall annually report to the division as to marital status in the case of
128 a widow or widower or age and physical or mental condition of a dependent
129 child. The division shall provide forms for the making of such reports.

✓

Bill

Copy