

SECOND REGULAR SESSION

# SENATE BILL NO. 969

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time February 27, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

6262S.011

## AN ACT

To repeal sections 287.140 and 287.150, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation, with existing penalty provisions.

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

Section A. Sections 287.140 and 287.150, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 287.140 and 287.150, to  
3 read as follows:

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

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

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. **The first notice of dispute shall**  
64 **not be delivered later than the date that the provider receives the first**  
65 **payment for any portion of the fee charged.**

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

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

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

82 8. The employer may be required by the division or the commission to  
83 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic  
84 joints, or eyes, or braces, as needed, for life whenever the division or the  
85 commission shall find that the injured employee may be partially or wholly  
86 relieved of the effects of a permanent injury by the use thereof. The director of  
87 the division shall establish a procedure whereby a claim for compensation may  
88 be reactivated after settlement of such claim is completed. The claim shall be  
89 reactivated only after the claimant can show good cause for the reactivation of  
90 this claim and the claim shall be made only for the payment of medical

91 procedures involving life-threatening surgical procedures or if the claimant  
92 requires the use of a new, or the modification, alteration or exchange of an  
93 existing, prosthetic device. For the purpose of this subsection, "life threatening"  
94 shall mean a situation or condition which, if not treated immediately, will likely  
95 result in the death of the injured worker.

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

99 10. The employer shall have the right to select the licensed treating  
100 physician, surgeon, chiropractic physician, or other health care provider;  
101 provided, however, that such physicians, surgeons or other health care providers  
102 shall offer only those services authorized within the scope of their licenses. For  
103 the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

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

110 (1) The patient;

111 (2) The employer of the patient with workers' compensation liability for  
112 the injury or disease being treated;

113 (3) The workers' compensation insurer of such employer; and

114 (4) The workers' compensation adjusting company for such insurer.

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

116 13. (1) No hospital, physician or other health care provider, other than  
117 a hospital, physician or health care provider selected by the employee at his own  
118 expense pursuant to subsection 1 of this section, shall bill or attempt to collect  
119 any fee or any portion of a fee for services rendered to an employee due to a  
120 work-related injury or report to any credit reporting agency any failure of the  
121 employee to make such payment, when an injury covered by this chapter has  
122 occurred and such hospital, physician or health care provider has received actual  
123 notice given in writing by the employee, the employer or the employer's  
124 insurer. Actual notice shall be deemed received by the hospital, physician or  
125 health care provider five days after mailing by certified mail by the employer or  
126 insurer to the hospital, physician or health care provider.

127 (2) The notice shall include:

128 (a) The name of the employer;

129 (b) The name of the insurer, if known;

130 (c) The name of the employee receiving the services;

131 (d) The general nature of the injury, if known; and

132 (e) Where a claim has been filed, the claim number, if known.

133 (3) When an injury is found to be noncompensable under this chapter, the  
134 hospital, physician or other health care provider shall be entitled to pursue the  
135 employee for any unpaid portion of the fee or other charges for authorized  
136 services provided to the employee. Any applicable statute of limitations for an  
137 action for such fees or other charges shall be tolled from the time notice is given  
138 to the division by a hospital, physician or other health care provider pursuant to  
139 subdivision (6) of this subsection, until a determination of noncompensability in  
140 regard to the injury which is the basis of such services is made, or in the event  
141 there is an appeal to the labor and industrial relations commission, until a  
142 decision is rendered by that commission.

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

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

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

163 a form prescribed by the division.

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

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 third  
71 person or party is liable to the employee, to the dependents of an employee, or to  
72 any person eligible to sue for the employee's wrongful death as provided in section  
73 537.080 in a case where the employee suffers or suffered from an occupational  
74 disease due to toxic exposure and the employee, dependents, or persons eligible  
75 to sue for wrongful death are compensated under this chapter, in no case shall  
76 the employer then be subrogated to the rights of an employee, dependents, or  
77 persons eligible to sue for wrongful death against such third person or party  
78 when the occupational disease due to toxic exposure arose from the employee's  
79 work for employer.]

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Bill

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