

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 113

AN ACT

To repeal sections 287.120, 287.140, 287.170, and 287.780, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation, with an existing penalty provision.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Sections 287.120, 287.140, 287.170, and 287.780,  
2 RSMo, are repealed and four new sections enacted in lieu thereof,  
3 to be known as sections 287.120, 287.140, 287.170, and 287.780,  
4 to read as follows:

5           287.120. 1. Every employer subject to the provisions of  
6 this chapter shall be liable, irrespective of negligence, to  
7 furnish compensation under the provisions of this chapter for  
8 personal injury or death of the employee by accident or  
9 occupational disease arising out of and in the course of the  
10 employee's employment. Any employee of such employer shall not  
11 be liable for any injury or death for which compensation is  
12 recoverable under this chapter and every employer and employees  
13 of such employer shall be released from all other liability  
14 whatsoever, whether to the employee or any other person, except  
15 that an employee shall not be released from liability for injury  
16 or death if the employee engaged in an affirmative negligent act

1 that purposefully and dangerously caused or increased the risk of  
2 injury. The term "accident" as used in this section shall  
3 include, but not be limited to, injury or death of the employee  
4 caused by the unprovoked violence or assault against the employee  
5 by any person.

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

12 3. No compensation shall be allowed under this chapter for  
13 the injury or death due to the employee's intentional  
14 self-inflicted injury, but the burden of proof of intentional  
15 self-inflicted injury shall be on the employer or the person  
16 contesting the claim for allowance.

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

22 5. Where the injury is caused by the failure of the  
23 employee to use safety devices where provided by the employer, or  
24 from the employee's failure to obey any reasonable rule adopted  
25 by the employer for the safety of employees, the compensation and  
26 death benefit provided for herein shall be reduced at least  
27 twenty-five but not more than fifty percent; provided, that it is  
28 shown that the employee had actual knowledge of the rule so

1 adopted by the employer; and provided, further, that the employer  
2 had, prior to the injury, made a reasonable effort to cause his  
3 or her employees to use the safety device or devices and to obey  
4 or follow the rule so adopted for the safety of the employees.

5 6. (1) Where the employee fails to obey any rule or policy  
6 adopted by the employer relating to a drug-free workplace or the  
7 use of alcohol or nonprescribed controlled drugs in the  
8 workplace, the compensation and death benefit provided for herein  
9 shall be reduced fifty percent if the injury was sustained in  
10 conjunction with the use of alcohol or nonprescribed controlled  
11 drugs.

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

17 (3) The voluntary use of alcohol to the percentage of blood  
18 alcohol sufficient under Missouri law to constitute legal  
19 intoxication shall give rise to a rebuttable presumption that the  
20 voluntary use of alcohol under such circumstances was the  
21 proximate cause of the injury. A preponderance of the evidence  
22 standard shall apply to rebut such presumption. An employee's  
23 refusal to take a test for alcohol or a nonprescribed controlled  
24 substance, as defined by section 195.010, at the request of the  
25 employer shall result in the forfeiture of benefits under this  
26 chapter if the employer had sufficient cause to suspect use of  
27 alcohol or a nonprescribed controlled substance by the claimant  
28 or if the employer's policy clearly authorizes post-injury

1 testing.

2 (4) Any positive test result for a nonprescribed controlled  
3 drug from an employee, if confirmed by mass-spectrometry, using  
4 generally accepted medical or forensic testing procedures, shall  
5 give rise to a rebuttable presumption that the tested  
6 nonprescribed controlled drug was in the employee's system and,  
7 if the test was administered within forty-eight hours of the  
8 injury, such positive result shall give rise to a rebuttable  
9 presumption that the injury was sustained in conjunction with the  
10 use of the tested nonprescribed controlled drug. A preponderance  
11 of the evidence standard shall apply to rebut such presumption.

12 7. Where the employee's participation in a recreational  
13 activity or program is the prevailing cause of the injury,  
14 benefits or compensation otherwise payable under this chapter for  
15 death or disability shall be forfeited regardless that the  
16 employer may have promoted, sponsored or supported the  
17 recreational activity or program, expressly or impliedly, in  
18 whole or in part. The forfeiture of benefits or compensation  
19 shall not apply when:

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

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

24 (3) The injury from such recreational activity or program  
25 occurs on the employer's premises due to an unsafe condition and  
26 the employer had actual knowledge of the employee's participation  
27 in the recreational activity or program and of the unsafe  
28 condition of the premises and failed to either curtail the

1 recreational activity or program or cure the unsafe condition.

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

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

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

16 287.140. 1. In addition to all other compensation paid to  
17 the employee under this section, the employee shall receive and  
18 the employer shall provide such medical, surgical, chiropractic,  
19 and hospital treatment, including nursing, custodial, ambulance  
20 and medicines, as may reasonably be required after the injury or  
21 disability, to cure and relieve from the effects of the injury.  
22 If the employee desires, he shall have the right to select his  
23 own physician, surgeon, or other such requirement at his own  
24 expense. Where the requirements are furnished by a public  
25 hospital or other institution, payment therefor shall be made to  
26 the proper authorities. Regardless of whether the health care  
27 provider is selected by the employer or is selected by the  
28 employee at the employee's expense, the health care provider

1 shall have the affirmative duty to communicate fully with the  
2 employee regarding the nature of the employee's injury and  
3 recommended treatment exclusive of any evaluation for a permanent  
4 disability rating. Failure to perform such duty to communicate  
5 shall constitute a disciplinary violation by the provider subject  
6 to the provisions of chapter 620. When an employee is required  
7 to submit to medical examinations or necessary medical treatment  
8 at a place outside of the local or metropolitan area from the  
9 employee's principal place of employment, the employer or its  
10 insurer shall advance or reimburse the employee for all necessary  
11 and reasonable expenses; except that an injured employee who  
12 resides outside the state of Missouri and who is employed by an  
13 employer located in Missouri shall have the option of selecting  
14 the location of services provided in this section either at a  
15 location within one hundred miles of the injured employee's  
16 residence, place of injury or place of hire by the employer. The  
17 choice of provider within the location selected shall continue to  
18 be made by the employer. In case of a medical examination if a  
19 dispute arises as to what expenses shall be paid by the employer,  
20 the matter shall be presented to the legal advisor, the  
21 administrative law judge or the commission, who shall set the sum  
22 to be paid and same shall be paid by the employer prior to the  
23 medical examination. In no event, however, shall the employer or  
24 its insurer be required to pay transportation costs for a greater  
25 distance than two hundred fifty miles each way from place of  
26 treatment.

27 2. If it be shown to the division or the commission that  
28 the requirements are being furnished in such manner that there is

1 reasonable ground for believing that the life, health, or  
2 recovery of the employee is endangered thereby, the division or  
3 the commission may order a change in the physician, surgeon,  
4 hospital or other requirement.

5 3. All fees and charges under this chapter shall be fair  
6 and reasonable, shall be subject to regulation by the division or  
7 the commission, or the board of rehabilitation in rehabilitation  
8 cases. A health care provider shall not charge a fee for  
9 treatment and care which is governed by the provisions of this  
10 chapter greater than the usual and customary fee the provider  
11 receives for the same treatment or service when the payor for  
12 such treatment or service is a private individual or a private  
13 health insurance carrier. The division or the commission, or the  
14 board of rehabilitation in rehabilitation cases, shall also have  
15 jurisdiction to hear and determine all disputes as to such  
16 charges. A health care provider is bound by the determination  
17 upon the reasonableness of health care bills.

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

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

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

7  
8 Notice shall be presumed to occur no later than five business  
9 days after transmission by certified United States mail.

10          5. No compensation shall be payable for the death or  
11 disability of an employee, if and insofar as the death or  
12 disability may be caused, continued or aggravated by any  
13 unreasonable refusal to submit to any medical or surgical  
14 treatment or operation, the risk of which is, in the opinion of  
15 the division or the commission, inconsiderable in view of the  
16 seriousness of the injury. If the employee dies as a result of  
17 an operation made necessary by the injury, the death shall be  
18 deemed to be caused by the injury.

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

23          7. Every hospital or other person furnishing the employee  
24 with medical aid shall permit its record to be copied by and  
25 shall furnish full information to the division or the commission,  
26 the employer, the employee or his dependents and any other party  
27 to any proceedings for compensation under this chapter, and  
28 certified copies of the records shall be admissible in evidence

1 in any such proceedings.

2 8. The employer may be required by the division or the  
3 commission to furnish an injured employee with artificial legs,  
4 arms, hands, surgical orthopedic joints, or eyes, or braces, as  
5 needed, for life whenever the division or the commission shall  
6 find that the injured employee may be partially or wholly  
7 relieved of the effects of a permanent injury by the use thereof.  
8 The director of the division shall establish a procedure whereby  
9 a claim for compensation may be reactivated after settlement of  
10 such claim is completed, unless the employee explicitly agrees  
11 that the claim cannot be reactivated under this subsection. The  
12 claim shall be reactivated only after the claimant can show good  
13 cause for the reactivation of this claim and the claim shall be  
14 made only for the payment of medical procedures involving  
15 life-threatening surgical procedures or if the claimant requires  
16 the use of a new, or the modification, alteration or exchange of  
17 an existing, prosthetic device. For the purpose of this  
18 subsection, "life threatening" shall mean a situation or  
19 condition which, if not treated immediately, will likely result  
20 in the death of the injured worker.

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

24 10. The employer shall have the right to select the  
25 licensed treating physician, surgeon, chiropractic physician, or  
26 other health care provider; provided, however, that such  
27 physicians, surgeons or other health care providers shall offer  
28 only those services authorized within the scope of their

1 licenses. For the purpose of this subsection, subsection 2 of  
2 section 287.030 shall not apply.

3 11. Any physician or other health care provider who orders,  
4 directs or refers a patient for treatment, testing, therapy or  
5 rehabilitation at any institution or facility shall, at or prior  
6 to the time of the referral, disclose in writing if such health  
7 care provider, any of his partners or his employer has a  
8 financial interest in the institution or facility to which the  
9 patient is being referred, to the following:

10 (1) The patient;

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

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

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

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

18 13. (1) No hospital, physician or other health care  
19 provider, other than a hospital, physician or health care  
20 provider selected by the employee at his own expense pursuant to  
21 subsection 1 of this section, shall bill or attempt to collect  
22 any fee or any portion of a fee for services rendered to an  
23 employee due to a work-related injury or report to any credit  
24 reporting agency any failure of the employee to make such  
25 payment, when an injury covered by this chapter has occurred and  
26 such hospital, physician or health care provider has received  
27 actual notice given in writing by the employee, the employer or  
28 the employer's insurer. Actual notice shall be deemed received

1 by the hospital, physician or health care provider five days  
2 after mailing by certified mail by the employer or insurer to the  
3 hospital, physician or health care provider.

4 (2) The notice shall include:

5 (a) The name of the employer;

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

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

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

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

11 (3) When an injury is found to be noncompensable under this  
12 chapter, the hospital, physician or other health care provider  
13 shall be entitled to pursue the employee for any unpaid portion  
14 of the fee or other charges for authorized services provided to  
15 the employee. Any applicable statute of limitations for an  
16 action for such fees or other charges shall be tolled from the  
17 time notice is given to the division by a hospital, physician or  
18 other health care provider pursuant to subdivision (6) of this  
19 subsection, until a determination of noncompensability in regard  
20 to the injury which is the basis of such services is made, or in  
21 the event there is an appeal to the labor and industrial  
22 relations commission, until a decision is rendered by that  
23 commission.

24 (4) If a hospital, physician or other health care provider  
25 or a debt collector on behalf of such hospital, physician or  
26 other health care provider pursues any action to collect from an  
27 employee after such notice is properly given, the employee shall  
28 have a cause of action against the hospital, physician or other

1 health care provider for actual damages sustained plus up to one  
2 thousand dollars in additional damages, costs and reasonable  
3 attorney's fees.

4 (5) If an employer or insurer fails to make payment for  
5 authorized services provided to the employee by a hospital,  
6 physician or other health care provider pursuant to this chapter,  
7 the hospital, physician or other health care provider may proceed  
8 pursuant to subsection 4 of this section with a dispute against  
9 the employer or insurer for any fees or other charges for  
10 services provided.

11 (6) A hospital, physician or other health care provider  
12 whose services have been authorized in advance by the employer or  
13 insurer may give notice to the division of any claim for fees or  
14 other charges for services provided for a work-related injury  
15 that is covered by this chapter, with copies of the notice to the  
16 employee, employer and the employer's insurer. Where such notice  
17 has been filed, the administrative law judge may order direct  
18 payment from the proceeds of any settlement or award to the  
19 hospital, physician or other health care provider for such fees  
20 as are determined by the division. The notice shall be on a form  
21 prescribed by the division.

22 14. The employer may allow or require an employee to use  
23 any of the employee's accumulated paid leave, personal leave, or  
24 medical or sick leave to attend to medical treatment, physical  
25 rehabilitation, or medical evaluations during work time. The  
26 intent of this subsection is to specifically supercede and  
27 abrogate any case law that contradicts the express language of  
28 this section.

287.170. 1. For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability at the weekly rate of compensation in effect under this section on the date of the injury for which compensation is being made. The amount of such compensation shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury;

1 provided that the weekly compensation paid under this subdivision  
2 shall not exceed an amount equal to one hundred percent of the  
3 state average weekly wage;

4 (4) For all injuries occurring on or after August 28, 1991,  
5 the weekly compensation shall be an amount equal to sixty-six and  
6 two-thirds percent of the injured employee's average weekly  
7 earnings as of the date of the injury; provided that the weekly  
8 compensation paid under this subdivision shall not exceed an  
9 amount equal to one hundred five percent of the state average  
10 weekly wage;

11 (5) For all injuries occurring on or after September 28,  
12 1981, the weekly compensation shall in no event be less than  
13 forty dollars per week.

14 2. Temporary total disability payments shall be made to the  
15 claimant by check or other negotiable instruments approved by the  
16 director which will not result in delay in payment and shall be  
17 forwarded directly to the claimant without intervention, or, when  
18 requested, to claimant's attorney if represented, except as  
19 provided in section 454.517, by any other party except by order  
20 of the division of workers' compensation.

21 3. An employee is disqualified from receiving temporary  
22 total disability during any period of time in which the claimant  
23 applies and receives unemployment compensation.

24 4. If the employee is terminated from post-injury  
25 employment based upon the employee's post-injury misconduct,  
26 neither temporary total disability nor temporary partial  
27 disability benefits under this section or section 287.180 are  
28 payable. As used in this section, the phrase "post-injury

1 misconduct" shall not include absence from the workplace due to  
2 an injury unless the employee is capable of working with  
3 restrictions, as certified by a physician.

4 5. If an employee voluntarily separates from employment  
5 with an employer at a time when the employer had work available  
6 for the employee that was in compliance with any medical  
7 restriction imposed upon the employee as a result of the injury  
8 that is the subject of a claim for benefits under this chapter,  
9 neither temporary total disability nor temporary partial  
10 disability benefits available under this section or section  
11 287.180 shall be payable.

12 287.780. No employer or agent shall discharge or [in any  
13 way] discriminate against any employee [for exercising any of]  
14 because the employee exercised his or her rights under this  
15 chapter. Any employee who has been discharged or discriminated  
16 against in such manner shall have a civil action for damages  
17 against his or her employer. For purposes of this section, the  
18 word "because" shall mean that the discharge or discrimination  
19 would not have happened but for the employee having exercised his  
20 or her rights under this chapter.