

FIRST REGULAR SESSION

SENATE BILL NO. 290

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Read 1st time January 11, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1323S.01I

AN ACT

To repeal sections 287.120, 287.140, 287.150, 287.170, and 287.780, RSMo, and to enact in lieu thereof five 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Section A. Sections 287.120, 287.140, 287.150, 287.170, and 287.780, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 287.120, 287.140, 287.150, 287.170, and 287.780, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident or occupational disease arising out of and in the course of the employee's employment. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such injury or death by accident or occupational disease,

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

18 except such rights and remedies as are not provided for by this chapter.

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

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

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

36 6. (1) Where the employee fails to obey any rule or policy adopted by the
37 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
38 controlled drugs in the workplace, the compensation and death benefit provided
39 for herein shall be reduced fifty percent if the injury was sustained in conjunction
40 with the use of alcohol or nonprescribed controlled drugs.

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

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

54 employer's policy clearly authorizes post-injury testing.

55 **(4) Any positive test for a nonprescribed controlled drug from an**
56 **employee, if confirmed by gas chromatography mass-spectrometry,**
57 **using generally accepted medical or forensic testing procedures, shall**
58 **give rise to a rebuttable presumption that the tested non-prescribed**
59 **controlled drug was in the employee's system and, if the test was**
60 **administered within forty-eight hours of the injury, such positive result**
61 **shall give rise a rebuttable presumption that the injury was sustained**
62 **in conjunction with the use of the tested noncontrolled drug. A**
63 **preponderance of the evidence standard shall apply to rebut such**
64 **presumption.**

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

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

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

75 (3) The injury from such recreational activity or program occurs on the
76 employer's premises due to an unsafe condition and the employer had actual
77 knowledge of the employee's participation in the recreational activity or program
78 and of the unsafe condition of the premises and failed to either curtail the
79 recreational activity or program or cure the unsafe condition.

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

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

88 10. The ability of a firefighter to receive benefits for psychological stress
89 under section 287.067 shall not be diminished by the provisions of subsections 8

90 and 9 of this section.

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
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 **usual and customary** and shall be subject to regulation by the division or the
39 commission, or the board of rehabilitation in rehabilitation cases. A health care
40 provider shall not charge a fee for treatment and care which is governed by the
41 provisions of this chapter greater than the usual and customary fee the provider
42 receives for the same treatment or service when the payor for such treatment or
43 service is a private individual or a private health insurance carrier. The division
44 or the commission, or the board of rehabilitation in rehabilitation cases, shall also
45 have jurisdiction to hear and determine all disputes as to such charges. A health
46 care provider is bound by the determination upon the reasonableness of health
47 care bills.

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

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

60 (2) One year from the date the first notice of dispute of the medical charge
61 was received by the health care provider if such services were rendered after July
62 1, 2013.

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

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

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

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

81 8. The employer may be required by the division or the commission to
82 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic
83 joints, or eyes, or braces, as needed, for life whenever the division or the
84 commission shall find that the injured employee may be partially or wholly
85 relieved of the effects of a permanent injury by the use thereof. The director of
86 the division shall establish a procedure whereby a claim for compensation may
87 be reactivated after settlement of such claim is completed, **unless the employee**
88 **explicitly agrees that the claim cannot be reactivated under this**
89 **subsection.** The claim shall be reactivated only after the claimant can show
90 good cause for the reactivation of this claim and the claim shall be made only for
91 the payment of medical procedures involving life-threatening surgical procedures
92 or if the claimant requires the use of a new, or the modification, alteration or
93 exchange of an existing, prosthetic device. For the purpose of this subsection,
94 "life threatening" shall mean a situation or condition which, if not treated
95 immediately, will likely 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.]

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

5 compensation shall be computed as follows:

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

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

21 (3) For all injuries occurring on or after August 28, 1990, but before
22 August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
23 and two-thirds percent of the injured employee's average weekly earnings as of
24 the date of the injury; provided that the weekly compensation paid under this
25 subdivision shall not exceed an amount equal to one hundred percent of the state
26 average weekly wage;

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

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

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

40 3. An employee is disqualified from receiving temporary total disability

41 during any period of time in which the claimant applies and receives
42 unemployment compensation.

43 4. If the employee is terminated from post-injury employment based upon
44 the employee's post-injury misconduct, neither temporary total disability nor
45 temporary partial disability benefits under this section or section 287.180 are
46 payable. As used in this section, the phrase "post-injury misconduct" shall not
47 include absence from the workplace due to an injury unless the employee is
48 capable of working with restrictions, as certified by a physician.

49 **5. If an employee voluntarily separates from employment with an**
50 **employer at a time when the employer had work available for the**
51 **employee that was in compliance with any medical restriction imposed**
52 **upon the employee as a result of the injury that is the subject of a claim**
53 **for benefits under this chapter, neither temporary total disability nor**
54 **temporary partial disability benefits available under this section or**
55 **section 287.180 shall be payable.**

287.780. No employer or agent shall discharge or in any way discriminate
2 against any employee for exercising any of his rights under this chapter. Any
3 employee who has been discharged or discriminated against shall have a civil
4 action for damages against his employer. **To prove retaliatory discharge or**
5 **discrimination, an employee shall demonstrate that the filing of a claim**
6 **for workers' compensation was the exclusive cause of the employer's**
7 **discrimination or the employee's discharge.**

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