

SENATE BILL NO. 1188

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK AND SENATOR GANNON.

5413S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 287.120, 287.240, and 537.610, RSMo, and to enact in lieu thereof three new sections relating to liability of employers.

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

Section A. Sections 287.120, 287.240, and 537.610, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 287.120, 287.240, and 537.610, to read as
4 follows:

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

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

18 2. The rights and remedies herein granted to an
19 employee shall exclude all other rights and remedies of the
20 employee, the employee's spouse, parents, personal
21 representatives, dependents, heirs or next kin, at common
22 law or otherwise, on account of such injury or death by
23 accident or occupational disease, except such rights and
24 remedies as are not provided for by this chapter.

25 3. No compensation shall be allowed under this chapter
26 for the injury or death due to the employee's intentional
27 self-inflicted injury, but the burden of proof of
28 intentional self-inflicted injury shall be on the employer
29 or the person contesting the claim for allowance.

30 4. Where the injury **or death** is caused by the failure
31 of the employer to comply with any **safety standard issued by**
32 **the employer or the occupational safety and health**
33 **administration, regulation, or** statute in this state or any
34 lawful order of the division or the commission, the
35 compensation and death benefit provided for under this
36 chapter shall be increased [**fifteen**] **at least twenty-five**
37 **but not more than fifty** percent.

38 5. Where the injury is caused by the failure of the
39 employee to use safety devices where provided by the
40 employer, or from the employee's failure to obey any
41 reasonable rule adopted by the employer for the safety of
42 employees, the compensation and death benefit provided for
43 herein shall be reduced at least twenty-five but not more
44 than fifty percent; provided, that it is shown that the
45 employee had actual knowledge of the rule so adopted by the
46 employer; and provided, further, that the employer had,
47 prior to the injury, made a reasonable effort to cause his
48 or her employees to use the safety device or devices and to

49 obey or follow the rule so adopted for the safety of the
50 employees.

51 6. (1) Where the employee fails to obey any rule or
52 policy adopted by the employer relating to a drug-free
53 workplace or the use of alcohol or nonprescribed controlled
54 drugs in the workplace, the compensation and death benefit
55 provided for herein shall be reduced fifty percent if the
56 injury was sustained in conjunction with the use of alcohol
57 or nonprescribed controlled drugs.

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

63 (3) The voluntary use of alcohol to the percentage of
64 blood alcohol sufficient under Missouri law to constitute
65 legal intoxication shall give rise to a rebuttable
66 presumption that the voluntary use of alcohol under such
67 circumstances was the proximate cause of the injury. A
68 preponderance of the evidence standard shall apply to rebut
69 such presumption. An employee's refusal to take a test for
70 alcohol or a nonprescribed controlled substance, as defined
71 by section 195.010, at the request of the employer shall
72 result in the forfeiture of benefits under this chapter if
73 the employer had sufficient cause to suspect use of alcohol
74 or a nonprescribed controlled substance by the claimant or
75 if the employer's policy clearly authorizes post-injury
76 testing.

77 (4) Any positive test result for a nonprescribed
78 controlled drug or the metabolites of such drug from an
79 employee shall give rise to a rebuttable presumption, which
80 may be rebutted by a preponderance of evidence, that the

81 tested nonprescribed controlled drug was in the employee's
82 system at the time of the accident or injury and that the
83 injury was sustained in conjunction with the use of the
84 tested nonprescribed controlled drug if:

85 (a) The initial testing was administered within twenty-
86 four hours of the accident or injury;

87 (b) Notice was given to the employee of the test
88 results within fourteen calendar days of the insurer or
89 group self-insurer receiving actual notice of the
90 confirmatory test results;

91 (c) The employee was given an opportunity to perform a
92 second test upon the original sample; and

93 (d) The initial or any subsequent testing that forms
94 the basis of the presumption was confirmed by mass
95 spectrometry using generally accepted medical or forensic
96 testing procedures.

97 7. Where the employee's participation in a
98 recreational activity or program is the prevailing cause of
99 the injury, benefits or compensation otherwise payable under
100 this chapter for death or disability shall be forfeited
101 regardless that the employer may have promoted, sponsored or
102 supported the recreational activity or program, expressly or
103 impliedly, in whole or in part. The forfeiture of benefits
104 or compensation shall not apply when:

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

107 (2) The employee was paid wages or travel expenses
108 while participating in such recreational activity or
109 program; or

110 (3) The injury from such recreational activity or
111 program occurs on the employer's premises due to an unsafe
112 condition and the employer had actual knowledge of the

113 employee's participation in the recreational activity or
114 program and of the unsafe condition of the premises and
115 failed to either curtail the recreational activity or
116 program or cure the unsafe condition.

117 8. Mental injury resulting from work-related stress
118 does not arise out of and in the course of the employment,
119 unless it is demonstrated that the stress is work related
120 and was extraordinary and unusual. The amount of work
121 stress shall be measured by objective standards and actual
122 events.

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

128 10. The ability of a firefighter to receive benefits
129 for psychological stress under section 287.067 shall not be
130 diminished by the provisions of subsections 8 and 9 of this
131 section.

132 **11. The provisions of subsection 2 of this section**
133 **shall not apply to any cause of action that may be brought**
134 **on behalf of an unborn child or their representative in the**
135 **case of an injury or death which caused the death of an**
136 **unborn child.**

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

4 (1) In all cases the employer shall pay direct to the
5 persons furnishing the same the reasonable expense of the
6 burial of the deceased employee not exceeding [five] **fifteen**
7 thousand dollars. But no person shall be entitled to
8 compensation for the burial expenses of a deceased employee

9 unless he or she has furnished the same by authority of the
10 widow or widower, the nearest relative of the deceased
11 employee in the county of his or her death, his or her
12 personal representative, or the employer, who shall have the
13 right to give the authority in the order named. All fees
14 and charges under this section shall be fair and
15 reasonable[,] **and** shall be subject to regulation by the
16 division or the commission [and shall be limited to such as
17 are fair and reasonable for similar service to persons of a
18 like standard of living]. The division or the commission
19 shall also have jurisdiction to hear and determine all
20 disputes as to the charges. If the deceased employee leaves
21 no dependents, the death benefit in this subdivision
22 provided shall be the limit of the liability of the employer
23 under this chapter on account of the death, except as herein
24 provided for burial expenses and except as provided in
25 section 287.140; provided that in all cases when the
26 employer admits or does not deny liability for the burial
27 expense, it shall be paid within thirty days after written
28 notice, that the service has been rendered, has been
29 delivered to the employer. The notice may be sent by
30 registered mail, return receipt requested, or may be made by
31 personal delivery;

32 (2) The employer shall also pay to the dependents of
33 the employee a death benefit based on the employee's average
34 weekly earnings during the year immediately preceding the
35 injury that results in the death of the employee, as
36 provided in section 287.250. The amount of compensation for
37 death, which shall be paid in installments in the same
38 manner that compensation is required to be paid under this
39 chapter, shall be computed as follows:

40 (a) If the injury which caused the death occurred on
41 or after September 28, 1983, but before September 28, 1986,
42 the weekly compensation shall be an amount equal to sixty-
43 six and two-thirds percent of the employee's average weekly
44 earnings during the year immediately preceding the injury;
45 provided that the weekly compensation paid under this
46 paragraph shall not exceed an amount equal to seventy
47 percent of the state average weekly wage, as such wage is
48 determined by the division of employment security, as of the
49 July first immediately preceding the date of injury;

50 (b) If the injury which caused the death occurred on
51 or after September 28, 1986, but before August 28, 1990, the
52 weekly compensation shall be an amount equal to sixty-six
53 and two-thirds percent of the employee's average weekly
54 earnings during the year immediately preceding the injury;
55 provided that the weekly compensation paid under this
56 paragraph shall not exceed an amount equal to seventy-five
57 percent of the state average weekly wage, as such wage is
58 determined by the division of employment security, as of the
59 July first immediately preceding the date of injury;

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

68 (d) If the injury which caused the death occurred on
69 or after August 28, 1991, the weekly compensation shall be
70 an amount equal to sixty-six and two-thirds percent of the
71 injured employee's average weekly earnings as of the date of

72 the injury; provided that the weekly compensation paid under
73 this paragraph shall not exceed an amount equal to one
74 hundred five percent of the state average weekly wage;

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

78 (3) The word "dependent" as used in this chapter shall
79 mean:

80 (a) A wife upon a husband with whom she lives or who
81 is legally liable for her support, and a husband upon a wife
82 with whom he lives or who is legally liable for his support;
83 provided that on the death or remarriage of a widow or
84 widower, the death benefit shall cease unless there be other
85 dependents entitled to any death benefits under this
86 chapter. In the event of remarriage, a lump sum payment
87 equal in amount to the benefits due for a period of two
88 years shall be paid to the widow or widower. Thereupon the
89 periodic death benefits shall cease unless there are other
90 dependents entitled to any death benefit under this chapter,
91 in which event the periodic benefits to which such widow or
92 widower would have been entitled had he or she not died or
93 remarried shall be divided among such other dependents and
94 paid to them during their period of entitlement under this
95 chapter; or

96 (b) A natural, posthumous, or adopted child or
97 children, whether legitimate or illegitimate, including any
98 stepchild claimable by the deceased on his or her federal
99 tax return at the time of injury, under the age of eighteen
100 years, or over that age if physically or mentally
101 incapacitated from wage earning, upon the parent legally
102 liable for the support or with whom he, she, or they are
103 living at the time of the death of the parent. In case

104 there is a wife or a husband mentally or physically
105 incapacitated from wage earning, dependent upon a wife or
106 husband, and a child or more than one child thus dependent,
107 the death benefit shall be divided among them in such
108 proportion as may be determined by the commission after
109 considering their ages and other facts bearing on the
110 dependency. In all other cases questions of the degree of
111 dependency shall be determined in accordance with the facts
112 at the time of the injury, and in such other cases if there
113 is more than one person wholly dependent the death benefit
114 shall be divided equally among them. The payment of death
115 benefits to a child or other dependent as provided in this
116 paragraph shall cease when the dependent dies, attains the
117 age of eighteen years, or becomes physically and mentally
118 capable of wage earning over that age, or until twenty-two
119 years of age if the child of the deceased is in attendance
120 and remains as a full-time student in any accredited
121 educational institution, or if at eighteen years of age the
122 dependent child is a member of the Armed Forces of the
123 United States on active duty; provided, however, that such
124 dependent child shall be entitled to compensation during
125 four years of full-time attendance at a fully accredited
126 educational institution to commence prior to twenty-three
127 years of age and immediately upon cessation of his or her
128 active duty in the Armed Forces, unless there are other
129 dependents entitled to the death benefit under this chapter;

130 (4) The division or the commission may, in its
131 discretion, order or award the share of compensation of any
132 such child to be paid to the parent, grandparent, or other
133 adult next of kin or conservator of the child for the
134 latter's support, maintenance and education, which order or
135 award upon notice to the parties may be modified from time

136 to time by the commission in its discretion with respect to
137 the person to whom shall be paid the amount of the order or
138 award remaining unpaid at the time of the modification;

139 (5) The payments of compensation by the employer in
140 accordance with the order or award of the division or the
141 commission shall discharge the employer from all further
142 obligations as to the compensation;

143 (6) All death benefits in this chapter shall be paid
144 in installments in the same manner as provided for
145 disability compensation;

146 (7) Every employer shall keep a record of the correct
147 names and addresses of the dependents of each of his or her
148 employees, and upon the death of an employee by accident
149 arising out of and in the course of his or her employment
150 shall so far as possible immediately furnish the division
151 with such names and addresses;

152 (8) Dependents receiving death benefits under the
153 provisions of this chapter shall annually report to the
154 division as to marital status in the case of a widow or
155 widower or age and physical or mental condition of a
156 dependent child. The division shall provide forms for the
157 making of such reports.

537.610. 1. The commissioner of administration,
2 through the purchasing division, and the governing body of
3 each political subdivision of this state, notwithstanding
4 any other provision of law, may purchase liability insurance
5 for tort claims, made against the state or the political
6 subdivision, but the maximum amount of such coverage shall
7 not exceed **[two] four** million dollars for all claims arising
8 out of a single occurrence and shall not exceed **[three] five**
9 hundred thousand dollars for any one person in a single
10 accident or occurrence, except for those claims governed by

11 the provisions of the Missouri workers' compensation law,
12 chapter 287, and no amount in excess of the above limits
13 shall be awarded or settled upon. Sovereign immunity for
14 the state of Missouri and its political subdivisions is
15 waived only to the maximum amount of and only for the
16 purposes covered by such policy of insurance purchased
17 pursuant to the provisions of this section and in such
18 amount and for such purposes provided in any self-insurance
19 plan duly adopted by the governing body of any political
20 subdivision of the state.

21 2. The liability of the state and its public entities
22 on claims within the scope of sections 537.600 to 537.650,
23 shall not exceed [two] **four** million dollars for all claims
24 arising out of a single accident or occurrence and shall not
25 exceed [three] **five** hundred thousand dollars for any one
26 person in a single accident or occurrence, except for those
27 claims governed by the provisions of the Missouri workers'
28 compensation law, chapter 287.

29 3. No award for damages on any claim against a public
30 entity within the scope of sections 537.600 to 537.650,
31 shall include punitive or exemplary damages, **provided that**
32 **punitive or exemplary damages may be awarded when the**
33 **plaintiff shows by clear and convincing evidence that the**
34 **public entity violated a safety standard issued by the**
35 **employer or the federal occupational safety and health**
36 **administration, regulation, or statute in this state, or any**
37 **lawful order of a court or other judicial body.**

38 4. If the amount awarded to or settled upon multiple
39 claimants exceeds [two] **four** million dollars, any party may
40 apply to any circuit court to apportion to each claimant his
41 proper share of the total amount limited by subsection 1 of
42 this section. The share apportioned each claimant shall be

43 in the proportion that the ratio of the award or settlement
44 made to him bears to the aggregate awards and settlements
45 for all claims arising out of the accident or occurrence,
46 but the share shall not exceed [~~three~~] **five** hundred thousand
47 dollars.

48 5. The limitation on awards for liability provided for
49 in this section shall be increased or decreased on an annual
50 basis effective January first of each year in accordance
51 with the Implicit Price Deflator for Personal Consumption
52 Expenditures as published by the Bureau of Economic Analysis
53 of the United States Department of Commerce. The current
54 value of the limitation shall be calculated by the director
55 of the department of commerce and insurance, who shall
56 furnish that value to the secretary of state, who shall
57 publish such value in the Missouri Register as soon after
58 each January first as practicable, but it shall otherwise be
59 exempt from the provisions of section 536.021.

60 6. Any claim filed against any public entity under
61 this section shall be subject to the penalties provided by
62 supreme court rule 55.03, or any successor rule.

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