

SECOND REGULAR SESSION

SENATE BILL NO. 935

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

4335S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 287.120, RSMo, and to enact in lieu thereof one new section relating to reducing workers' compensation benefits based on marijuana usage.

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

Section A. Section 287.120, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 287.120,
3 to read as 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.

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 is caused by the failure of the
31 employer to comply with any statute in this state or any
32 lawful order of the division or the commission, the
33 compensation and death benefit provided for under this
34 chapter shall be increased fifteen percent.

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

48 6. (1) Where the employee fails to obey any rule or
49 policy adopted by the employer relating to a drug-free

50 workplace or the use of alcohol, **marijuana**, or nonprescribed
51 controlled drugs in the workplace, the compensation and
52 death benefit provided for herein shall be reduced fifty
53 percent if the injury was sustained in conjunction with the
54 use of alcohol, **marijuana**, or nonprescribed controlled drugs.

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

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

75 (4) Any positive test result for a **marijuana or**
76 nonprescribed controlled drug or the metabolites of such
77 drug from an employee shall give rise to a rebuttable
78 presumption, which may be rebutted by a preponderance of
79 evidence, that the tested **marijuana or** nonprescribed
80 controlled drug was in the employee's system at the time of
81 the accident or injury and that the injury was sustained in

82 conjunction with the use of the tested **marijuana or**
83 nonprescribed controlled drug if:

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

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

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

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

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

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

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

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

114 failed to either curtail the recreational activity or
115 program or cure the unsafe condition.

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

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

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

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