

SENATE BILL NO. 1718

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

7366S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 287.030 and 287.128, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation, with penalty provisions.

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

Section A. Sections 287.030 and 287.128, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 287.030 and 287.128, to read as follows:

287.030. 1. The word "employer" as used in this
2 chapter shall be construed to mean:

- 3 (1) Every person, partnership, association,
4 corporation, limited liability partnership or company,
5 trustee, receiver, the legal representatives of a deceased
6 employer, and every other person, including any person or
7 corporation operating a railroad and any public service
8 corporation, using the service of another for pay;
- 9 (2) The state, county, municipal corporation,
10 township, school or road, drainage, swamp and levee
11 districts, or school boards, board of education, regents,
12 curators, managers or control commission, board or any other
13 political subdivision, corporation, or quasi-corporation, or
14 cities under special charter, or under the commission form
15 of government;
- 16 (3) Any of the above-defined employers must have five
17 or more employees to be deemed an employer for the purposes

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

18 of this chapter unless election is made to become subject to
19 the provisions of this chapter as provided in subsection 2
20 of section 287.090, [except that] **and** construction industry
21 employers who erect, demolish, alter or repair improvements
22 shall be deemed an employer for the purposes of this chapter
23 if they have [one] **five** or more employees. An employee who
24 is a member of the employer's family within the third degree
25 of affinity or consanguinity shall be counted in determining
26 the total number of employees of such employer.

27 2. Any reference to the employer shall also include
28 his or her insurer or group self-insurer.

287.128. 1. It shall be unlawful for any person to
2 knowingly present or cause to be presented any false or
3 fraudulent claim for the payment of benefits pursuant to a
4 workers' compensation claim.

5 2. It shall be unlawful for any insurance company or
6 self-insurer in this state to knowingly and intentionally
7 refuse to comply with known and legally indisputable
8 compensation obligations with intent to defraud.

9 3. It shall be unlawful for any person to:

10 (1) Knowingly present multiple claims for the same
11 occurrence with intent to defraud;

12 (2) Knowingly assist, abet, solicit or conspire with:

13 (a) Any person who knowingly presents any false or
14 fraudulent claim for the payment of benefits;

15 (b) Any person who knowingly presents multiple claims
16 for the same occurrence with an intent to defraud; or

17 (c) Any person who purposefully prepares, makes or
18 subscribes to any writing with the intent to present or use
19 the same, or to allow it to be presented in support of any
20 such claim;

21 (3) Knowingly make or cause to be made any false or
22 fraudulent claim for payment of a health care benefit;

23 (4) Knowingly submit a claim for a health care benefit
24 which was not used by, or on behalf of, the claimant;

25 (5) Knowingly present multiple claims for payment of
26 the same health care benefit with an intent to defraud;

27 (6) Knowingly make or cause to be made any false or
28 fraudulent material statement or material representation for
29 the purpose of obtaining or denying any benefit;

30 (7) Knowingly make or cause to be made any false or
31 fraudulent statements with regard to entitlement to benefits
32 with the intent to discourage an injured worker from making
33 a legitimate claim;

34 (8) Knowingly make or cause to be made a false or
35 fraudulent material statement to an investigator of the
36 division in the course of the investigation of fraud or
37 noncompliance.

38 For the purposes of subdivisions (6), (7), and (8) of this
39 subsection, the term "statement" includes any notice, proof
40 of injury, bill for services, payment for services, hospital
41 or doctor records, X-ray or test results.

42 4. Any person violating any of the provisions of
43 subsection 1 or 2 of this section shall be guilty of a class
44 E felony. In addition, the person shall be liable to the
45 state of Missouri for a fine up to ten thousand dollars or
46 double the value of the fraud whichever is greater. Any
47 person violating any of the provisions of subsection 3 of
48 this section shall be guilty of a class A misdemeanor and
49 the person shall be liable to the state of Missouri for a
50 fine up to ten thousand dollars. Any person who has
51 previously been found guilty of violating any of the

52 provisions of subsection 1, 2 or 3 of this section and who
53 subsequently violates any of the provisions of subsection 1,
54 2 or 3 of this section shall be guilty of a class D felony.

55 5. It shall be unlawful for any person, company, or
56 other entity to prepare or provide an invalid certificate of
57 insurance as proof of workers' compensation insurance. Any
58 person violating any of the provisions of this subsection
59 shall be guilty of a class E felony and, in addition, shall
60 be liable to the state of Missouri for a fine up to ten
61 thousand dollars or double the value of the fraud, whichever
62 is greater.

63 6. Any person who knowingly misrepresents any fact in
64 order to obtain workers' compensation insurance at less than
65 the proper rate for that insurance shall be guilty of a
66 class A misdemeanor. Any person who has previously been
67 found guilty of violating any of the provisions of this
68 section and who subsequently violates any of the provisions
69 of this section shall be guilty of a class E felony.

70 7. Any employer who knowingly fails to insure his **or**
71 **her** liability pursuant to this chapter **shall result in a**
72 **written warning for the first violation and upon a second**
73 **violation or any additional subsequent violations thereafter**
74 shall be guilty of a class A misdemeanor and, in addition,
75 shall be liable to the state of Missouri for a penalty in an
76 amount up to three times the annual premium the employer
77 would have paid had such employer been insured or up to
78 fifty thousand dollars, whichever amount is greater. [Any
79 person who has previously been found guilty of violating any
80 of the provisions of this section and who subsequently
81 violates any of the provisions of this section shall be
82 guilty of a class E felony.]

83 8. Any person may file a complaint alleging fraud or
84 noncompliance with this chapter with a legal advisor in the
85 division of workers' compensation. The legal advisor shall
86 refer the complaint to the fraud and noncompliance unit
87 within the division. The unit shall investigate all
88 complaints and present any finding of fraud or noncompliance
89 to the director, who may refer the file to the attorney
90 general. The attorney general may prosecute any fraud or
91 noncompliance associated with this chapter. All costs
92 incurred by the attorney general associated with any
93 investigation and prosecution pursuant to this subsection
94 shall be paid out of the workers' compensation fund. Any
95 fines or penalties levied and received as a result of any
96 prosecution under this section shall be paid to the workers'
97 compensation fund. Any restitution ordered as a part of the
98 judgment shall be paid to the person or persons who were
99 defrauded.

100 9. Any and all reports, records, tapes, photographs,
101 and similar materials or documentation submitted by any
102 person, including the department of commerce and insurance,
103 to the fraud and noncompliance unit or otherwise obtained by
104 the unit pursuant to this section, used to conduct an
105 investigation for any violation under this chapter, shall be
106 considered confidential and not subject to the requirements
107 of chapter 610. Nothing in this subsection prohibits the
108 fraud and noncompliance unit from releasing records used to
109 conduct an investigation to the local, state, or federal law
110 enforcement authority or federal or state agency conducting
111 an investigation, upon written request.

112 10. There is hereby established in the division of
113 workers' compensation a fraud and noncompliance
114 administrative unit responsible for investigating incidences

115 of fraud and failure to comply with the provisions of this
116 chapter.

117 11. Any prosecution for a violation of the provisions
118 of this section or section 287.129 shall be commenced within
119 three years after discovery of the offense by an aggrieved
120 party or by a person who has a legal duty to represent an
121 aggrieved party and who is not a party to the offense. As
122 used in this subsection, the term "person who has a legal
123 duty to represent an aggrieved party" shall mean the
124 attorney general or the prosecuting attorney having
125 jurisdiction to prosecute the action.

126 12. By January 1, 2006, the attorney general shall
127 forward to the division and the members of the general
128 assembly the first edition of an annual report of the costs
129 of prosecuting fraud and noncompliance under this chapter.
130 The report shall include the number of cases filed with the
131 attorney general by county by the fraud and noncompliance
132 unit, the number of cases prosecuted by county by the
133 attorney general, fines and penalties levied and received,
134 and all incidental costs.

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