

FIRST REGULAR SESSION

SENATE BILL NO. 182

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Pre-filed December 18, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0601S.011

AN ACT

To repeal sections 287.120 and 287.140, RSMo, and to enact in lieu thereof two new sections relating to reductions in workers' compensation benefits, with penalty provisions.

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

Section A. Sections 287.120 and 287.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.120 and 287.140, to read as follows: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 arising out of and in the course of the employee's employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. 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 accidental injury or death, except such rights and remedies as are not provided for by this chapter.

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

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

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

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

31 6. (1) Where the employee fails to obey any rule or policy adopted by the
32 employer relating to a drug-free workplace or the use of alcohol or nonprescribed
33 controlled drugs in the workplace, the compensation and death benefit provided
34 for herein shall be reduced fifty percent if the injury was sustained in conjunction
35 with the use of alcohol or nonprescribed controlled drugs.

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

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

50 7. Where the employee's participation in a recreational activity or
51 program is the prevailing cause of the injury, benefits or compensation otherwise
52 payable under this chapter for death or disability shall be forfeited regardless
53 that the employer may have promoted, sponsored or supported the recreational

54 activity or program, expressly or impliedly, in whole or in part. The forfeiture of
55 benefits or compensation shall not apply when:

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

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

60 (3) The injury from such recreational activity or program occurs on the
61 employer's premises due to an unsafe condition and the employer had actual
62 knowledge of the employee's participation in the recreational activity or program
63 and of the unsafe condition of the premises and failed to either curtail the
64 recreational activity or program or cure the unsafe condition.

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

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

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

76 **11. When the compensation or death benefit for an injury has**
77 **been reduced under this section, the reduction shall not initially be**
78 **made in the form of a reduction of payments made to hospitals,**
79 **physicians, or other health care providers for services rendered to cure**
80 **and relieve the effects of the injury. The reduction shall be taken from**
81 **the total death and disability compensation as awarded under this**
82 **section.**

83 **12. When the compensation or death benefit for an injury has**
84 **been reduced under this section, the division shall notify the hospital,**
85 **physician, or other health care provider that rendered services in**
86 **connection with the injury, of the amount of the reduction in writing,**
87 **within ten days of such a determination.**

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 620,
16 RSMo. 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 shall be subject to regulation by the division or the commission, or the board of

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

47 4. The division shall, by regulation, establish methods to resolve disputes
48 concerning the reasonableness of medical charges, services, or aids. This
49 regulation shall govern resolution of disputes between employers and medical
50 providers over fees charged, whether or not paid, and shall be in lieu of any other
51 administrative procedure under this chapter. The employee shall not be a party
52 to a dispute over medical charges, nor shall the employee's recovery in any way
53 be jeopardized because of such dispute.

54 5. No compensation shall be payable for the death or disability of an
55 employee, if and insofar as the death or disability may be caused, continued or
56 aggravated by any unreasonable refusal to submit to any medical or surgical
57 treatment or operation, the risk of which is, in the opinion of the division or the
58 commission, inconsiderable in view of the seriousness of the injury. If the
59 employee dies as a result of an operation made necessary by the injury, the death
60 shall be deemed to be caused by the injury.

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

64 7. Every hospital or other person furnishing the employee with medical
65 aid shall permit its record to be copied by and shall furnish full information to
66 the division or the commission, the employer, the employee or his dependents and
67 any other party to any proceedings for compensation under this chapter, and
68 certified copies of the records shall be admissible in evidence in any such
69 proceedings.

70 8. The employer may be required by the division or the commission to
71 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic
72 joints, or eyes, or braces, as needed, for life whenever the division or the
73 commission shall find that the injured employee may be partially or wholly
74 relieved of the effects of a permanent injury by the use thereof. The director of

75 the division shall establish a procedure whereby a claim for compensation may
76 be reactivated after settlement of such claim is completed. The claim shall be
77 reactivated only after the claimant can show good cause for the reactivation of
78 this claim and the claim shall be made only for the payment of medical
79 procedures involving life-threatening surgical procedures or if the claimant
80 requires the use of a new, or the modification, alteration or exchange of an
81 existing, prosthetic device. For the purpose of this subsection, "life threatening"
82 shall mean a situation or condition which, if not treated immediately, will likely
83 result in the death of the injured worker.

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

87 10. The employer shall have the right to select the licensed treating
88 physician, surgeon, chiropractic physician, or other health care provider;
89 provided, however, that such physicians, surgeons or other health care providers
90 shall offer only those services authorized within the scope of their licenses. For
91 the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

92 11. Any physician or other health care provider who orders, directs or
93 refers a patient for treatment, testing, therapy or rehabilitation at any institution
94 or facility shall, at or prior to the time of the referral, disclose in writing if such
95 health care provider, any of his partners or his employer has a financial interest
96 in the institution or facility to which the patient is being referred, to the
97 following:

98 (1) The patient;

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

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

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

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

104 13. (1) No hospital, physician or other health care provider, other than
105 a hospital, physician or health care provider selected by the employee at his own
106 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
107 any fee or any portion of a fee for services rendered to an employee due to a
108 work-related injury or report to any credit reporting agency any failure of the
109 employee to make such payment, when an injury covered by this chapter has
110 occurred and such hospital, physician or health care provider has received actual

111 notice given in writing by the employee, the employer or the employer's
112 insurer. Actual notice shall be deemed received by the hospital, physician or
113 health care provider five days after mailing by certified mail by the employer or
114 insurer to the hospital, physician or health care provider.

115 (2) The notice shall include:

116 (a) The name of the employer;

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

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

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

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

121 (3) When an injury is found to be noncompensable under this chapter, **or**
122 **the compensation or death benefit has been reduced or forfeited under**
123 **section 287.120**, the hospital, physician or other health care provider shall be
124 entitled to pursue the employee for any unpaid portion of the fee or other charges
125 for authorized services provided to the employee. Any applicable statute of
126 limitations for an action for such fees or other charges shall be tolled from the
127 time notice is given to the division by a hospital, physician or other health care
128 provider pursuant to subdivision (6) of this subsection, until a determination of
129 noncompensability in regard to the injury which is the basis of such services is
130 made, or in the event there is an appeal to the labor and industrial relations
131 commission, until a decision is rendered by that commission.

132 (4) If a hospital, physician or other health care provider or a debt collector
133 on behalf of such hospital, physician, or other health care provider pursues any
134 action to collect from an employee **[after] from the time** such notice is properly
135 given **until a determination of noncompensability in regard to the injury**
136 **that is the basis of such services is made, or a determination that**
137 **compensation or death benefits shall be reduced or forfeited under**
138 **section 287.120**, the employee shall have a cause of action against the hospital,
139 physician or other health care provider for actual damages sustained plus up to
140 one thousand dollars in additional damages, costs and reasonable attorney's fees.

141 (5) If an employer or insurer fails to make payment for authorized
142 services provided to the employee by a hospital, physician or other health care
143 provider pursuant to this chapter, the hospital, physician or other health care
144 provider may proceed pursuant to subsection 4 of this section with a dispute
145 against the employer or insurer for any fees or other charges for services
146 provided.

147 (6) A hospital, physician or other health care provider whose services have
148 been authorized in advance by the employer or insurer may give notice to the
149 division of any claim for fees or other charges for services provided for a
150 work-related injury that is covered by this chapter, with copies of the notice to
151 the employee, employer and the employer's insurer. Where such notice has been
152 filed, the administrative law judge may order direct payment from the proceeds
153 of any settlement or award to the hospital, physician or other health care
154 provider for such fees as are determined by the division. The notice shall be on
155 a form prescribed by the division.

156 14. The employer may allow or require an employee to use any of the
157 employee's accumulated paid leave, personal leave, or medical or sick leave to
158 attend to medical treatment, physical rehabilitation, or medical evaluations
159 during work time. The intent of this subsection is to specifically supercede and
160 abrogate any case law that contradicts the express language of this section.

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Bill

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