

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 8
96TH GENERAL ASSEMBLY

0367L.10C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.067, 287.120, and 287.150, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

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

Section A. Sections 287.067, 287.120, and 287.150, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.067, 287.120, and 287.150, to read as follows:

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury **or death** by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 3. An injury due to repetitive motion is recognized as an occupational disease for
16 purposes of this chapter. An occupational disease due to repetitive motion is compensable only
17 if the occupational exposure was the prevailing factor in causing both the resulting medical
18 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation
19 to any other factor, causing both the resulting medical condition and disability. Ordinary,
20 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal
21 activities of day-to-day living shall not be compensable.

22 4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for
23 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to
24 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of
25 producing occupational deafness.

26 5. "Radiation disability" is recognized as an occupational disease for purposes of this
27 chapter and is hereby defined to be that disability due to radioactive properties or substances or
28 to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the
29 use of or direct contact with radium or radioactive properties or substances or the use of or direct
30 exposure to Roentgen rays (X-rays) or ionizing radiation.

31 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the
32 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases
33 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,
34 carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police
35 officers of a paid police department certified under chapter 590 if a direct causal relationship is
36 established, or psychological stress of firefighters of a paid fire department if a direct causal
37 relationship is established.

38 7. Any employee who is exposed to and contracts any contagious or communicable
39 disease arising out of and in the course of his or her employment shall be eligible for benefits
40 under this chapter as an occupational disease.

41 8. With regard to occupational disease due to repetitive motion, if the exposure to the
42 repetitive motion which is found to be the cause of the injury is for a period of less than three
43 months and the evidence demonstrates that the exposure to the repetitive motion with the
44 immediate prior employer was the prevailing factor in causing the injury, the prior employer
45 shall be liable for such occupational disease.

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for
3 personal injury or death of the employee by accident **or by occupational disease** arising out of
4 and in the course of the employee's employment[.]. **Any employee of such employer shall not**
5 **be liable for any injury or death for which compensation is recoverable under this chapter**

6 and **every employer and employees of such employer** shall be released from all other liability
7 therefor whatsoever, whether to the employee or any other person, **except that an employee**
8 **shall not be released from liability for injury or death if the employee engaged in an act**
9 **that intentionally caused or increased the risk of injury.** The term "accident" as used in this
10 section shall include, but not be limited to, injury or death of the employee caused by the
11 unprovoked violence or assault against the employee by any person.

12 2. The rights and remedies herein granted to an employee shall exclude all other rights
13 and remedies of the employee, his wife, her husband, parents, personal representatives,
14 dependents, heirs or next kin, at common law or otherwise, on account of such [accidental] injury
15 or death **by accident or occupational disease**, except such rights and remedies as are not
16 provided for by this chapter.

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

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

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

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

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

39 (3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under
40 Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the
41 voluntary use of alcohol under such circumstances was the proximate cause of the injury. A

42 preponderance of the evidence standard shall apply to rebut such presumption. An employee's
43 refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section
44 195.010, RSMo, at the request of the employer shall result in the forfeiture of benefits under this
45 chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed
46 controlled substance by the claimant or if the employer's policy clearly authorizes post-injury
47 testing.

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

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

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

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

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

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

68 10. The ability of a firefighter to receive benefits for psychological stress under section
69 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.150. 1. Where a third person is liable to the employee or to the dependents, for the
2 injury or death, the employer shall be subrogated to the right of the employee or to the
3 dependents against such third person, and the recovery by such employer shall not be limited to
4 the amount payable as compensation to such employee or dependents, but such employer may
5 recover any amount which such employee or his dependents would have been entitled to recover.
6 Any recovery by the employer against such third person shall be apportioned between the
7 employer and employee or his dependents using the provisions of subsections 2 and 3 of this
8 section.

9 2. When a third person is liable for the death of an employee and compensation is paid
10 or payable under this chapter, and recovery is had by a dependent under this chapter either by
11 judgment or settlement for the wrongful death of the employee, the employer shall have a
12 subrogation lien on any recovery and shall receive or have credit for sums paid or payable under
13 this chapter to any of the dependents of the deceased employee to the extent of the settlement or
14 recovery by such dependents for the wrongful death. Recovery by the employer and credit for
15 future installments shall be computed using the provisions of subsection 3 of this section relating
16 to comparative fault of the employee.

17 3. Whenever recovery against the third person is effected by the employee or his
18 dependents, the employer shall pay from his share of the recovery a proportionate share of the
19 expenses of the recovery, including a reasonable attorney fee. After the expenses and attorney
20 fee have been paid, the balance of the recovery shall be apportioned between the employer and
21 the employee or his dependents in the same ratio that the amount due the employer bears to the
22 total amount recovered if there is no finding of comparative fault on the part of the employee,
23 or the total damages determined by the trier of fact if there is a finding of comparative fault on
24 the part of the employee. Notwithstanding the foregoing provision, the balance of the recovery
25 may be divided between the employer and the employee or his dependents as they may otherwise
26 agree. Any part of the recovery found to be due to the employer, the employee or his dependents
27 shall be paid forthwith and any part of the recovery paid to the employee or his dependents under
28 this section shall be treated by them as an advance payment by the employer on account of any
29 future installments of compensation in the following manner:

30 (1) The total amount paid to the employee or his dependents shall be treated as an
31 advance payment if there is no finding of comparative fault on the part of the employee; or

32 (2) A percentage of the amount paid to the employee or his dependents equal to the
33 percentage of fault assessed to the third person from whom recovery is made shall be treated as
34 an advance payment if there is a finding of comparative fault on the part of the employee.

35 4. In any case in which an injured employee has been paid benefits from the second
36 injury fund as provided in subsection 3 of section 287.141, and recovery is had against the third
37 party liable to the employee for the injury, the second injury fund shall be subrogated to the
38 rights of the employee against said third party to the extent of the payments made to him from
39 such fund, subject to provisions of subsections 2 and 3 of this section.

40 5. No construction design professional who is retained to perform professional services
41 on a construction project or any employee of a construction design professional who is assisting
42 or representing the construction design professional in the performance of professional services
43 on the site of the construction project shall be liable for any injury resulting from the employer's
44 failure to comply with safety standards on a construction project for which compensation is

45 recoverable under the workers' compensation law, unless responsibility for safety practices is
46 specifically assumed by contract. The immunity provided by this subsection to any construction
47 design professional shall not apply to the negligent preparation of design plans or specifications.

48 6. Any provision in any contract or subcontract, where one party is an employer in the
49 construction group of code classifications, which purports to waive subrogation rights provided
50 under this section in anticipation of a future injury or death is hereby declared against public
51 policy and void. Each contract of insurance for workers' compensation shall require the insurer
52 to diligently pursue all subrogation rights of the employer and shall require the employer to fully
53 cooperate with the insurer in pursuing such recoveries, except that the employer may enter into
54 compromise agreements with an insurer in lieu of the insurer pursuing subrogation against
55 another party. The amount of any subrogation recovery by an insurer shall be credited against
56 the amount of the actual paid losses in the determination of such employer's experience
57 modification factor within forty-five days of the collection of such amount.

58 **7. Notwithstanding any other provision of this section, when a third person is liable**
59 **to the employee or to the dependents of an employee in a case when there is a finding that**
60 **an occupational disease was caused by toxic exposure and the employee or dependents are**
61 **compensated under this chapter, in no case shall the employer be subrogated to the rights**
62 **of an employee or to the dependents of an employee against such third person when the**
63 **employer intentionally caused the occupational disease. As used in this subsection, the**
64 **term "toxic exposure" is defined to mean exposure to chemicals, dusts, particulates, fumes,**
65 **mists, fibers, solvents, vapors, radiation, or other substances or materials that, when**
66 **ingested, consumed, inhaled, or absorbed are sufficient to cause disease, death, mutations,**
67 **cancer, deformities, or reproductive abnormalities in humans.**