

FIRST REGULAR SESSION

# HOUSE BILL NO. 160

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BRANDOM (Sponsor), DIEHL,  
McNARY AND JONES (89) (Co-sponsors).

0480L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 287.120 and 287.800, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation.

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

Section A. Sections 287.120 and 287.800, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.120 and 287.800, to read as follows: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. **Co-employees shall be released from liability for negligence in performing the nondelegable duty of an employer to provide a safe workplace when the negligence contributes to a co-employee's personal injury or death by accident arising out of and in the course of the injured or deceased employee's employment, unless the co-employee engaged in purposeful, affirmatively, dangerous conduct.**

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.

17           **4.** 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.] 5.** Where the injury is caused by the failure of the employer to comply with any  
21 statute in this state or any lawful order of the division or the commission, the compensation and  
22 death benefit provided for under this chapter shall be increased fifteen percent.

23           **[5.] 6.** Where the injury is caused by the failure of the employee to use safety devices  
24 where provided by the employer, or from the employee's failure to obey any reasonable rule  
25 adopted by the employer for the safety of employees, the compensation and death benefit  
26 provided for herein shall be reduced at least twenty-five but not more than fifty percent;  
27 provided, that it is shown that the employee had actual knowledge of the rule so adopted by the  
28 employer; and 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 or follow the  
30 rule so adopted for the safety of the employees.

31           **[6.] 7. (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, at the request of the employer shall result in the forfeiture of benefits under this chapter  
45 if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled  
46 substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

47           **[7.] 8.** Where the employee's participation in a recreational activity or program is the  
48 prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for  
49 death or disability shall be forfeited regardless that the employer may have promoted, sponsored  
50 or supported the recreational activity or program, expressly or impliedly, in whole or in part. The  
51 forfeiture of benefits or compensation shall not apply when:

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

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

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

60 [8.] **9.** Mental injury resulting from work-related stress does not arise out of and in the  
61 course of the employment, unless it is demonstrated that the stress is work related and was  
62 extraordinary and unusual. The amount of work stress shall be measured by objective standards  
63 and actual events.

64 [9.] **10.** A mental injury is not considered to arise out of and in the course of the  
65 employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff,  
66 demotion, termination or any similar action taken in good faith by the employer.

67 [10.] **11.** The ability of a firefighter to receive benefits for psychological stress under  
68 section 287.067 shall not be diminished by the provisions of subsections [8 and] **9 and 10** of this  
69 section.

287.800. 1. Administrative law judges, associate administrative law judges, legal  
2 advisors, the labor and industrial relations commission, the division of workers' compensation,  
3 and any reviewing courts shall construe the provisions of this chapter strictly. **However, this**  
4 **subsection shall not be construed to limit immunity for co-employees for negligence in**  
5 **performing the nondelegable duty of employers to provide a safe workplace.**

6 2. Administrative law judges, associate administrative law judges, legal advisors, the  
7 labor and industrial relations commission, and the division of workers' compensation shall weigh  
8 the evidence impartially without giving the benefit of the doubt to any party when weighing  
9 evidence and resolving factual conflicts.