

SECOND REGULAR SESSION

HOUSE BILL NO. 1716

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RILEY.

3417H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.020, 287.067, 287.140, and 287.270, RSMo, and to enact in lieu thereof four new sections relating to workers' compensation.

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

Section A. Sections 287.020, 287.067, 287.140, and 287.270, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 287.020, 287.067,
3 287.140, and 287.270, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean
2 every person in the service of any employer, as defined in this chapter, under any contract of
3 hire, express or implied, oral or written, or under any appointment or election, including
4 executive officers of corporations. Except as otherwise provided in section 287.200, any
5 reference to any employee who has been injured shall, when the employee is dead, also
6 include his or her dependents, and other persons to whom compensation may be payable. The
7 word "employee" shall also include all minors who work for an employer, whether or not
8 such minors are employed in violation of law, and all such minors are hereby made of full age
9 for all purposes under, in connection with, or arising out of this chapter. The word
10 "employee" shall not include an individual who is the owner, as defined in section 301.010,
11 and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor
12 carrier operating within a commercial zone as defined in section 390.020 or **as described in**
13 **section** 390.041, or operating under a certificate issued by the Missouri department of
14 transportation or by the United States Department of Transportation, or any of its
15 subagencies. The word "employee" also shall not include any person performing services

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.

16 for board, lodging, aid, or sustenance received from any religious, charitable, or relief
17 organization.

18 2. The word "accident" as used in this chapter shall mean an unexpected traumatic
19 event or unusual strain identifiable by time and place of occurrence and producing at the time
20 objective symptoms of an injury caused by a specific event during a single work shift. An
21 injury is not compensable because work was a triggering or precipitating factor.

22 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has
23 arisen out of and in the course of employment. An injury by accident is compensable only if
24 the accident was the prevailing factor in causing ~~[both]~~ **the injury, the** resulting medical
25 condition ~~[and], the~~ **disability, and the need for treatment.** "The prevailing factor" is
26 defined to be the primary factor, in relation to any other factor, causing ~~[both]~~ **the injury, the**
27 resulting medical condition ~~[and], the~~ **disability, and the need for treatment.**

28 (2) An injury shall be deemed to arise out of and in the course of the employment
29 only if:

30 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
31 accident is the prevailing factor in causing the injury; and

32 (b) It does not come from a hazard or risk unrelated to the employment to which
33 workers would have been equally exposed outside of and unrelated to the employment in
34 normal nonemployment life.

35 (3) An injury resulting directly or indirectly from idiopathic causes is not
36 compensable.

37 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular
38 accident or myocardial infarction suffered by a worker is an injury only if the accident is the
39 prevailing factor in causing the resulting medical condition.

40 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
41 structure of the body and to the personal property which is used to make up the physical
42 structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and
43 other prostheses which are placed in or on the body to replace the physical structure and such
44 disease or infection as naturally results therefrom. These terms shall in no case except as
45 specifically provided in this chapter be construed to include occupational disease in any form,
46 nor shall they be construed to include any contagious or infectious disease contracted during
47 the course of the employment, nor shall they include death due to natural causes occurring
48 while the worker is at work.

49 4. "Death" when mentioned as a basis for the right to compensation means only death
50 resulting from such violence and its resultant effects occurring within three hundred weeks
51 after the accident; except that in cases of occupational disease, the limitation of three hundred
52 weeks shall not be applicable.

53 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
54 occur while traveling from the employee's home to the employer's principal place of business
55 or from the employer's principal place of business to the employee's home are not
56 compensable. The extension of premises doctrine is abrogated to the extent it extends
57 liability for accidents that occur on property not owned or controlled by the employer even if
58 the accident occurs on customary, approved, permitted, usual or accepted routes used by the
59 employee to get to and from their place of employment.

60 6. The term "total disability" as used in this chapter shall mean inability to return to
61 any employment and not merely mean inability to return to the employment in which the
62 employee was engaged at the time of the accident.

63 7. As used in this chapter and all acts amendatory thereof, the term "commission"
64 shall hereafter be construed as meaning and referring exclusively to the labor and industrial
65 relations commission of Missouri, and the term "director" shall hereafter be construed as
66 meaning the director of the department of commerce and insurance of the state of Missouri or
67 such agency of government as shall exercise the powers and duties now conferred and
68 imposed upon the department of commerce and insurance of the state of Missouri.

69 8. The term "division" as used in this chapter means the division of workers'
70 compensation of the department of labor and industrial relations of the state of Missouri.

71 9. For the purposes of this chapter, the term "minor" means a person who has not
72 attained the age of eighteen years; except that, for the purpose of computing the compensation
73 provided for in this chapter, the provisions of section 287.250 shall control.

74 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
75 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
76 "occupational disease", "arising out of", and "in the course of the employment" to include, but
77 not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80
78 S.W.3d 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc
79 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing,
80 interpreting, applying, or following those cases.

81 11. For the purposes of this chapter, "occupational diseases due to toxic exposure"
82 shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's
83 pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute
84 myelogenous leukemia, and myelodysplastic syndrome.

85 12. For the purposes of this chapter, "maximum medical improvement" shall mean
86 the point at which the injured employee's medical condition has stabilized and can no longer
87 reasonably improve with additional medical care, as determined within a reasonable degree of
88 medical certainty.

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 **injury, the** resulting medical condition ~~and~~, **the disability, and the need for treatment.** The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing ~~both~~ the **injury, the** resulting medical condition ~~and~~, **the disability, and the need for treatment.** 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.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing ~~both~~ the **injury, the** resulting medical condition ~~and~~, **the disability, and the need for treatment.** The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing ~~both~~ the **injury, the** resulting medical condition ~~and~~, **the disability, and the need for treatment.** 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.

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

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

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

38 causal relationship is established, or psychological stress of firefighters of a paid fire
39 department or paid peace officers of a police department who are certified under chapter 590
40 if a direct causal relationship is established.

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

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

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines,
4 as may reasonably be required after the injury or disability, to cure and relieve from the
5 effects of the injury. **For an employee to receive such treatment, the accident or**
6 **occupational disease shall be the prevailing factor in causing the injury, the resulting**
7 **medical condition, and the need for treatment.** If the employee desires, he **or she** shall
8 have the right to select his **or her** own physician, surgeon, or other such requirement at his **or**
9 **her** own expense. Where the requirements are furnished by a public hospital or other
10 institution, payment therefor shall be made to the proper authorities. Regardless of whether
11 the health care provider is selected by the employer or is selected by the employee at the
12 employee's expense, the health care provider shall have the affirmative duty to communicate
13 fully with the employee regarding the nature of the employee's injury and recommended
14 treatment exclusive of any evaluation for a permanent disability rating. Failure to perform
15 such duty to communicate shall constitute a disciplinary violation by the provider subject to
16 the provisions of chapter 620. When an employee is required to submit to medical
17 examinations or necessary medical treatment at a place outside of the local or metropolitan
18 area from the employee's principal place of employment, the employer or its insurer shall
19 advance or reimburse the employee for all necessary and reasonable expenses; except that an
20 injured employee who resides outside the state of Missouri and who is employed by an
21 employer located in Missouri shall have the option of selecting the location of services
22 provided in this section either at a location within one hundred miles of the injured
23 employee's residence, place of injury or place of hire by the employer. The choice of provider
24 within the location selected shall continue to be made by the employer. In case of a medical
25 examination if a dispute arises as to what expenses shall be paid by the employer, the matter
26 shall be presented to the legal advisor, the administrative law judge or the commission, who

27 shall set the sum to be paid and same shall be paid by the employer prior to the medical
28 examination. In no event, however, shall the employer or its insurer be required to pay
29 transportation costs for a greater distance than two hundred fifty miles each way from place of
30 treatment.

31 2. If it be shown to the division or the commission that the requirements are being
32 furnished in such manner that there is reasonable ground for believing that the life, health, or
33 recovery of the employee is endangered thereby, the division or the commission may order a
34 change in the physician, surgeon, hospital or other requirement.

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

44 4. The division shall, by regulation, establish methods to resolve disputes concerning
45 the reasonableness of medical charges, services, or aids. This regulation shall govern
46 resolution of disputes between employers and medical providers over fees charged, whether
47 or not paid, and shall be in lieu of any other administrative procedure under this chapter. The
48 employee shall not be a party to a dispute over medical charges, nor shall the employee's
49 recovery in any way be jeopardized because of such dispute. Any application for payment of
50 additional reimbursement, as such term is used in 8 CSR 50- 2.030, as amended, shall be filed
51 not later than:

52 (1) Two years from the date the first notice of dispute of the medical charge was
53 received by the health care provider if such services were rendered before July 1, 2013; and

54 (2) One year from the date the first notice of dispute of the medical charge was
55 received by the health care provider if such services were rendered after July 1, 2013.

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57 Notice shall be presumed to occur no later than five business days after transmission by
58 certified United States mail.

59 5. No compensation shall be payable for the death or disability of an employee, if and
60 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
61 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
62 opinion of the division or the commission, inconsiderable in view of the seriousness of the

63 injury. If the employee dies as a result of an operation made necessary by the injury, the death
64 shall be deemed to be caused by the injury.

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

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

73 8. The employer may be required by the division or the commission to furnish an
74 injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or
75 braces, as needed, for life whenever the division or the commission shall find that the injured
76 employee may be partially or wholly relieved of the effects of a permanent injury by the use
77 thereof. The director of the division shall establish a procedure whereby a claim for
78 compensation may be reactivated after settlement of such claim is completed. The claim shall
79 be reactivated only after the claimant can show good cause for the reactivation of this claim
80 and the claim shall be made only for the payment of medical procedures involving life-
81 threatening surgical procedures or if the claimant requires the use of a new, or the
82 modification, alteration or exchange of an existing, prosthetic device. For the purpose of this
83 subsection, "life threatening" shall mean a situation or condition which, if not treated
84 immediately, will likely result in the death of the injured worker.

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

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

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

97 (1) The patient;

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

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

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

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

103 13. (1) No hospital, physician or other health care provider, other than a hospital,
104 physician or health care provider selected by the employee at his **or her** own expense
105 pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion
106 of a fee for services rendered to an employee due to a work-related injury or report to any
107 credit reporting agency any failure of the employee to make such payment, when an injury
108 covered by this chapter has occurred and such hospital, physician or health care provider has
109 received actual notice given in writing by the employee, the employer or the employer's
110 insurer. Actual notice shall be deemed received by the hospital, physician or health care
111 provider five days after mailing by certified mail by the employer or insurer to the hospital,
112 physician or health care provider.

113 (2) The notice shall include:

114 (a) The name of the employer;

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

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

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

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

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

128 (4) If a hospital, physician or other health care provider or a debt collector on behalf
129 of such hospital, physician or other health care provider pursues any action to collect from an
130 employee after such notice is properly given, the employee shall have a cause of action
131 against the hospital, physician or other health care provider for actual damages sustained plus
132 up to one thousand dollars in additional damages, costs and reasonable attorney's fees.

133 (5) If an employer or insurer fails to make payment for authorized services provided
134 to the employee by a hospital, physician or other health care provider pursuant to this chapter,
135 the hospital, physician or other health care provider may proceed pursuant to subsection 4 of

136 this section with a dispute against the employer or insurer for any fees or other charges for
137 services provided.

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

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

287.270. ~~[No]~~ **1. Any savings or insurance of the injured employee, ~~[not]~~ any**
2 **benefits derived from ~~[any other source than]~~ the employer or the employer's insurer for**
3 **liability under this chapter, and any savings or insurance procured or sponsored by the**
4 **employer shall be considered in determining the compensation due ~~[hereunder, except as~~**
5 **~~provided in]~~ under this chapter, including the compensation due under** subsection 3 of
6 section 287.170~~[-and]~~. Employers of professional athletes under contract shall be entitled to
7 full credit for wages or benefits paid to the employee after the injury including medical,
8 surgical, or hospital benefits paid to or for the **professional athlete** employee or his **or her**
9 dependents on account of the injury, disability, or death, pursuant to the provisions of the
10 contract.

11 **2. If medical bills are in dispute and an administrative law judge or the**
12 **commission determines that the employer is responsible for the disputed medical bills,**
13 **the administrative law judge or the commission shall have the authority to order the**
14 **employer responsible for the medical bills and shall have the authority to order the**
15 **employer to make a payment only to the medical provider or providers to whom the**
16 **bills are due.**

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