

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1540

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), FISHER, FUHR, WHITE, LANT, COX,  
HIGDON AND FUNDERBURK (Co-sponsors).

5125L.02P

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 287.120, RSMo, and to enact in lieu thereof one new section relating to workers' compensation.

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

Section A. Section 287.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows: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]. **Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury.** 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.

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

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

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

30           6. (1) Where the employee fails to obey any rule or policy adopted by the employer  
31 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the  
32 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent  
33 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled  
34 drugs.

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

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

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

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

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

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

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

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

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

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