

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 1540

96TH GENERAL ASSEMBLY

5125L.02T

2012

AN ACT

To repeal sections 287.120, 287.450, 287.460, 287.520, 287.650, and 287.655, RSMo, and to enact in lieu thereof six new sections relating to workers' compensation.

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

Section A. Sections 287.120, 287.450, 287.460, 287.520, 287.650, and 287.655, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 287.120, 287.450, 287.460, 287.520, 287.650, and 287.655, to read as follows: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.

287.450. If the employer and employee or his dependents do not agree in regard to
2 compensation payable under this chapter, either party may make application **in a manner**
3 **determined by the division** for a hearing in regard to the matters at issue and for a ruling
4 thereon, except that no application for a hearing shall be considered until fourteen days after the
5 receipt by the division of the report of accident required under section 287.380. The
6 fourteen-day waiting period is not applicable to applications for hardship hearings. After the
7 application has been received, the division shall set a date for a hearing, which shall be held as
8 soon as practicable, and shall notify the interested parties of the time and place of the hearing.

287.460. 1. The division, through an administrative law judge, shall hear in a summary
2 proceeding the parties at issue and their representatives and witnesses and shall determine the
3 dispute by issuing the written award within ninety days of the last day of the hearing. The
4 hearing shall be concluded within thirty days of the date of commencement of the hearing, except
5 in extraordinary circumstances where a lengthy trial or complex issues necessitate a longer time
6 than ninety days. All evidence introduced at any such hearings shall be reported by a competent
7 reporter appointed by the division or be recorded by electronic means. The award, together with
8 a statement of the findings of fact, rulings of law and any other matters pertinent to the question
9 at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately
10 be sent by **electronic means or in the case of an unrepresented employee, by** United States
11 mail, to the parties in dispute and the employer's insurer.

12 2. The division of workers' compensation shall develop by rule procedures whereby
13 mediation services are provided to the parties in a claim for workers' compensation benefits
14 whereby claims may be mediated by the parties at a prehearing conference when the division

15 determines that a claim may be settled or upon application for a mediation settlement conference
16 filed by either party.

17 3. The division may require the parties to produce at the mediation conference all
18 available medical records and reports. Such mediation conference shall be informal to ascertain
19 the issues and attempt to resolve the claim or other pending issues. Such mediation conference
20 may be set at any time prior to the commencement of the evidentiary hearing and nothing in this
21 section shall be interpreted to delay the setting of the matter for hearing. Upon the request of any
22 party, a person providing mediation settlement services shall be disqualified from conducting any
23 evidentiary hearing relating to the claim without limiting the rights conferred by section 287.810.

287.520. 1. Any notice required under this chapter shall be deemed to have been
2 properly given and served when sent by registered or certified mail properly stamped and
3 addressed to the person or entity to whom given, at the last known address in time to reach the
4 person or entity in due time to act thereon, or to counsel for that person or entity in like manner.
5 Notice may also be given and served in like manner as summons in civil actions.

6 **2. Notwithstanding the provisions of subsection 1 of this section, the division may**
7 **serve or send any notices required under this chapter by electronic means, except that any**
8 **notices required to be sent to an employee not represented by counsel shall be sent by**
9 **registered or certified mail to the last known address of the employee unless the employee**
10 **consents to receive notices by electronic means. In the event the employee is represented**
11 **by counsel and counsel is sent proper notice under this chapter, notice to the employee may**
12 **be sent by regular mail.**

287.650. 1. The division of workers' compensation shall have such powers as may be
2 necessary to carry out all the provisions of this chapter **including the use of electronic**
3 **processes**, and it may make such rules and regulations as may be necessary for any such purpose,
4 subject to the approval of the labor and industrial relations commission of Missouri. The
5 division shall have power to strike pleadings and enter awards against any party or parties who
6 fail or refuse to comply with its lawful orders.

7 2. (1) The division shall have the power upon the expiration of five years after their
8 receipt to destroy reports of injuries on which no compensation (exclusive of medical costs) was
9 due or paid, together with the papers attendant to the filing of such reports, and also to destroy
10 records in compensable cases after the expiration of ten years from the date of the termination
11 of compensation.

12 (2) Records in cases that are submitted for hearing in the division shall include all
13 documentary exhibits admitted as evidence at the hearing. Records in all other cases shall
14 include all documents required to be filed with the division by this chapter or by rule of the
15 division, medical reports or records which are relied upon by the administrative law judge or
16 legal advisor in approving the compromise lump sum settlement, and copies of the compromise

17 lump sum settlement. These records shall be kept and stored by the division for a minimum of
18 ten years and shall include the originals or duplicate originals stored by electronic or other means
19 approved by the division.

20 3. No rule or portion of a rule promulgated under the authority of this section shall
21 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

287.655. Any claim before the division may be dismissed for failure to prosecute in
2 accordance with rules and regulations promulgated by the commission. **Such notice shall be**
3 **made in a manner determined by the division**, except **that for the employee** such notice
4 [need not] **shall** be by certified or registered mail [if] **unless** the [person or entity] **employee** to
5 whom notice is directed is represented by counsel and counsel is also given such notice [at
6 counsel's last known address]. To dismiss a claim the administrative law judge shall enter an
7 order of dismissal which shall be deemed an award and subject to review and appeal in the same
8 manner as provided for other awards in this chapter.

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