

FIRST REGULAR SESSION

HOUSE BILL NO. 1265

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RILEY.

2222H.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Section A. Sections 287.020, 287.067, 287.140, and 287.270, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, 287.140, and 287.270, to read as follows: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 every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.

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

21 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
22 out of and in the course of employment. An injury by accident is compensable only if the
23 accident was the prevailing factor in causing ~~[both]~~ **the injury, the** resulting medical condition,
24 ~~[and]~~ **the disability, and the need for treatment.** "The prevailing factor" is defined to be the
25 primary factor, in relation to any other factor, causing ~~[both]~~ **the injury, the** resulting medical
26 condition, ~~[and]~~ **the disability, and the need for treatment.**

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

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

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

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

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

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

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

51 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
52 occur while traveling from the employee's home to the employer's principal place of business or

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

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

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

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

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

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

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

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

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,
2 unless a different meaning is clearly indicated by the context, an identifiable disease arising with

3 or without human fault out of and in the course of the employment. Ordinary diseases of life to
4 which the general public is exposed outside of the employment shall not be compensable, except
5 where the diseases follow as an incident of an occupational disease as defined in this section.
6 The disease need not to have been foreseen or expected but after its contraction it must appear
7 to have had its origin in a risk connected with the employment and to have flowed from that
8 source as a rational consequence.

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

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

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

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

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

39 of a police department who are certified under chapter 590 if a direct causal relationship is
40 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, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. **For an employee to receive such treatment, the accident or occupational disease**
6 **shall be the prevailing factor in causing the injury, the resulting medical condition, and the**
7 **need for treatment.** If the employee desires, he shall have the right to select his own physician,
8 surgeon, or other such requirement at his own expense. Where the requirements are furnished
9 by a public hospital or other institution, payment therefor shall be made to the proper authorities.
10 Regardless of whether the health care provider is selected by the employer or is selected by the
11 employee at the employee's expense, the health care provider shall have the affirmative duty to
12 communicate fully with the employee regarding the nature of the employee's injury and
13 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure
14 to perform such duty to communicate shall constitute a disciplinary violation by the provider
15 subject to the provisions of chapter 620. When an employee is required to submit to medical
16 examinations or necessary medical treatment at a place outside of the local or metropolitan area
17 from the employee's principal place of employment, the employer or its insurer shall advance or
18 reimburse the employee for all necessary and reasonable expenses; except that an injured
19 employee who resides outside the state of Missouri and who is employed by an employer located
20 in Missouri shall have the option of selecting the location of services provided in this section
21 either at a location within one hundred miles of the injured employee's residence, place of injury
22 or place of hire by the employer. The choice of provider within the location selected shall
23 continue to be made by the employer. In case of a medical examination if a dispute arises as to
24 what expenses shall be paid by the employer, the matter shall be presented to the legal advisor,
25 the administrative law judge or the commission, who shall set the sum to be paid and same shall
26 be paid by the employer prior to the medical examination. In no event, however, shall the

27 employer or its insurer be required to pay transportation costs for a greater distance than two
28 hundred fifty miles each way from place of treatment.

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

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

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

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

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

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

56 5. No compensation shall be payable for the death or disability of an employee, if and
57 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
58 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
59 opinion of the division or the commission, inconsiderable in view of the seriousness of the
60 injury. If the employee dies as a result of an operation made necessary by the injury, the death
61 shall be deemed to be caused by the injury.

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

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

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

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

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

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

94 (1) The patient;

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

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

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

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

100 13. (1) No hospital, physician or other health care provider, other than a hospital,
101 physician or health care provider selected by the employee at his own expense pursuant to
102 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
103 services rendered to an employee due to a work-related injury or report to any credit reporting
104 agency any failure of the employee to make such payment, when an injury covered by this
105 chapter has occurred and such hospital, physician or health care provider has received actual
106 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
107 shall be deemed received by the hospital, physician or health care provider five days after
108 mailing by certified mail by the employer or insurer to the hospital, physician or health care
109 provider.

110 (2) The notice shall include:

111 (a) The name of the employer;

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

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

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

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

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

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

129 (5) If an employer or insurer fails to make payment for authorized services provided to
130 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
131 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
132 section with a dispute against the employer or insurer for any fees or other charges for services
133 provided.

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

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

287.270. 1. ~~[No]~~ **Any** savings or insurance of the injured employee, ~~[nor]~~ any benefits
2 derived from ~~[any other source than]~~ the employer or the employer's insurer for liability under
3 this chapter, **and any savings or insurance procured or sponsored by the employer** shall be
4 considered in determining the compensation due ~~[hereunder; except as provided in]~~ **under this**
5 **chapter, including the compensation due under** subsection 3 of section 287.170 ~~[, and]~~ .
6 Employers of professional athletes under contract shall be entitled to full credit for wages or
7 benefits paid to the employee after the injury including medical, surgical, or hospital benefits
8 paid to or for the **professional athlete** employee or his **or her** dependents on account of the
9 injury, disability, or death, pursuant to the provisions of the contract.

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

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