

SECOND REGULAR SESSION

# SENATE BILL NO. 1064

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR O'LAUGHLIN.

Read 1st time February 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5657S.011

## AN ACT

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

*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Section A. Section 287.120, RSMo, is repealed and one new section  
2 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  
2 be liable, irrespective of negligence, to furnish compensation under the provisions  
3 of this chapter for personal injury or death of the employee by accident or  
4 occupational disease arising out of and in the course of the employee's  
5 employment. Any employee of such employer shall not be liable for any injury or  
6 death for which compensation is recoverable under this chapter and every  
7 employer and employees of such employer shall be released from all other liability  
8 whatsoever, whether to the employee or any other person, except that an  
9 employee shall not be released from liability for injury or death if the employee  
10 engaged in [an affirmative negligent act that purposefully and dangerously  
11 caused or increased the risk of injury] **a willful act with the intent to cause**  
12 **harm**. The term "accident" as used in this section shall include, but not be  
13 limited to, injury or death of the employee caused by the unprovoked violence or  
14 assault against the employee by any person.

15 2. The rights and remedies herein granted to an employee shall exclude  
16 all other rights and remedies of the employee, the employee's spouse, parents,  
17 personal representatives, dependents, heirs or next kin, at common law or  
18 otherwise, on account of such injury or death by accident or occupational disease,  
19 except such rights and remedies as are not provided for by this chapter.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

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

37           6. (1) Where the employee fails to obey any rule or policy adopted by the  
38 employer relating to a drug-free workplace or the use of alcohol or nonprescribed  
39 controlled drugs in the workplace, the compensation and death benefit provided  
40 for herein shall be reduced fifty percent if the injury was sustained in conjunction  
41 with the use of alcohol or nonprescribed controlled drugs.

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

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

56 (4) Any positive test result for a nonprescribed controlled drug or the  
57 metabolites of such drug from an employee shall give rise to a rebuttable  
58 presumption, which may be rebutted by a preponderance of evidence, that the  
59 tested nonprescribed controlled drug was in the employee's system at the time of  
60 the accident or injury and that the injury was sustained in conjunction with the  
61 use of the tested nonprescribed controlled drug if:

62 (a) The initial testing was administered within twenty-four hours of the  
63 accident or injury;

64 (b) Notice was given to the employee of the test results within fourteen  
65 calendar days of the insurer or group self-insurer receiving actual notice of the  
66 confirmatory test results;

67 (c) The employee was given an opportunity to perform a second test upon  
68 the original sample; and

69 (d) The initial or any subsequent testing that forms the basis of the  
70 presumption was confirmed by mass spectrometry using generally accepted  
71 medical or forensic testing procedures.

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

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

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

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

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

91 9. A mental injury is not considered to arise out of and in the course of

92 the employment if it resulted from any disciplinary action, work evaluation, job  
93 transfer, layoff, demotion, termination or any similar action taken in good faith  
94 by the employer.

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

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Unofficial

Bill

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