

SECOND REGULAR SESSION

SENATE BILL NO. 1072

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

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

ADRIANE D. CROUSE, Secretary.

5720S.011

AN ACT

To repeal sections 287.020, 287.140, and 287.270, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation, with existing penalty provisions.

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

Section A. Section 287.020, 287.140, and 287.270, RSMo, are repealed and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

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

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

18 sustenance received from any religious, charitable, or relief organization.

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

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

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

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

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

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

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

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

53 4. "Death" when mentioned as a basis for the right to compensation means

54 only death resulting from such violence and its resultant effects occurring within
55 three hundred weeks after the accident; except that in cases of occupational
56 disease, the limitation of three hundred weeks shall not be applicable.

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

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

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

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

78 9. For the purposes of this chapter, the term "minor" means a person who
79 has not attained the age of eighteen years; except that, for the purpose of
80 computing the compensation provided for in this chapter, the provisions of section
81 287.250 shall control.

82 10. In applying the provisions of this chapter, it is the intent of the
83 legislature to reject and abrogate earlier case law interpretations on the meaning
84 of or definition of "accident", "occupational disease", "arising out of", and "in the
85 course of the employment" to include, but not be limited to, holdings in: *Bennett*
86 *v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002);
87 *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*,
88 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
89 following those cases.

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

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

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

29 employer, the matter shall be presented to the legal advisor, the administrative
30 law judge or the commission, who shall set the sum to be paid and same shall be
31 paid by the employer prior to the medical examination. In no event, however,
32 shall the employer or its insurer be required to pay transportation costs for a
33 greater distance than two hundred fifty miles each way from place of treatment.

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

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

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

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

61 (2) One year from the date the first notice of dispute of the medical charge
62 was received by the health care provider if such services were rendered after July
63 1, 2013.

64 Notice shall be presumed to occur no later than five business days after

65 transmission by certified United States mail.

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

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

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

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

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

99 10. The employer shall have the right to select the licensed treating
100 physician, surgeon, chiropractic physician, or other health care provider;

101 provided, however, that such physicians, surgeons or other health care providers
102 shall offer only those services authorized within the scope of their licenses. For
103 the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

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

110 (1) The patient;

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

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

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

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

116 13. (1) No hospital, physician or other health care provider, other than
117 a hospital, physician or health care provider selected by the employee at his own
118 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
119 any fee or any portion of a fee for services rendered to an employee due to a
120 work-related injury or report to any credit reporting agency any failure of the
121 employee to make such payment, when an injury covered by this chapter has
122 occurred and such hospital, physician or health care provider has received actual
123 notice given in writing by the employee, the employer or the employer's
124 insurer. Actual notice shall be deemed received by the hospital, physician or
125 health care provider five days after mailing by certified mail by the employer or
126 insurer to the hospital, physician or health care provider.

127 (2) The notice shall include:

128 (a) The name of the employer;

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

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

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

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

133 (3) When an injury is found to be noncompensable under this chapter, the
134 hospital, physician or other health care provider shall be entitled to pursue the
135 employee for any unpaid portion of the fee or other charges for authorized
136 services provided to the employee. Any applicable statute of limitations for an

137 action for such fees or other charges shall be tolled from the time notice is given
138 to the division by a hospital, physician or other health care provider pursuant to
139 subdivision (6) of this subsection, until a determination of noncompensability in
140 regard to the injury which is the basis of such services is made, or in the event
141 there is an appeal to the labor and industrial relations commission, until a
142 decision is rendered by that commission.

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

149 (5) If an employer or insurer fails to make payment for authorized
150 services provided to the employee by a hospital, physician or other health care
151 provider pursuant to this chapter, the hospital, physician or other health care
152 provider may proceed pursuant to subsection 4 of this section with a dispute
153 against the employer or insurer for any fees or other charges for services
154 provided.

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

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

287.270. [No] 1. **Any** savings or insurance of the injured employee, [nor]
2 **or** any benefits derived from any other source than the employer or the
3 employer's insurer for liability under this chapter, shall be considered in
4 determining the compensation due hereunder[; except as provided in] **including**

5 subsection 3 of section 287.170, and employers of professional athletes under
6 contract shall be entitled to full credit for wages or benefits paid to the employee
7 after the injury including medical, surgical or hospital benefits paid to or for the
8 employee or his dependents on account of the injury, disability, or death,
9 pursuant to the provisions of the contract.

10 **2. If medical bills are in dispute, the administrative law judge**
11 **shall have the authority to order the employer to be responsible for**
12 **medical benefits to the satisfaction of the medical provider.**

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