

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 434

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NOLTE.

1414L.01IP

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.120 and 287.800, RSMo, and to enact in lieu thereof two 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Section A. Sections 287.120 and 287.800, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.120 and 287.800, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation under the provisions of this chapter for
3 personal injury or death of the employee by accident arising out of and in the course of the
4 employee's employment, and shall be released from all other liability therefor whatsoever,
5 whether to the employee or any other person. The term "accident" as used in this section shall
6 include, but not be limited to, injury or death of the employee caused by the unprovoked violence
7 or assault against the employee by any person.

8 2. The rights and remedies herein granted to an employee shall exclude all other rights
9 and remedies of the employee, his wife, her husband, parents, personal representatives,
10 dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury
11 or death, except such rights and remedies as are not provided for by this chapter.

12 3. **Co-employees shall be released from liability for negligence in performing the**
13 **nondelegable duty of an employer to provide a safe workplace when the negligence**
14 **contributes to a co-employee's personal injury or death by accident arising out of and in**
15 **the course of the injured or deceased employee's employment, unless the co-employee**

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 **engaged in an intentional act that purposefully and dangerously caused or increased the**
17 **risk of injury.**

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

21 [4.] **5.** Where the injury is caused by the failure of the employer to comply with any
22 statute in this state or any lawful order of the division or the commission, the compensation and
23 death benefit provided for under this chapter shall be increased fifteen percent.

24 [5.] **6.** Where the injury is caused by the failure of the employee to use safety devices
25 where provided by the employer, or from the employee's failure to obey any reasonable rule
26 adopted by the employer for the safety of employees, the compensation and death benefit
27 provided for herein shall be reduced at least twenty-five but not more than fifty percent;
28 provided, that it is shown that the employee had actual knowledge of the rule so adopted by the
29 employer; and provided, further, that the employer had, prior to the injury, made a reasonable
30 effort to cause his or her employees to use the safety device or devices and to obey or follow the
31 rule so adopted for the safety of the employees.

32 [6.] **7.** (1) Where the employee fails to obey any rule or policy adopted by the employer
33 relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the
34 workplace, the compensation and death benefit provided for herein shall be reduced fifty percent
35 if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled
36 drugs.

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

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

48 [7.] **8.** Where the employee's participation in a recreational activity or program is the
49 prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for
50 death or disability shall be forfeited regardless that the employer may have promoted, sponsored

51 or supported the recreational activity or program, expressly or impliedly, in whole or in part. The
52 forfeiture of benefits or compensation shall not apply when:

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

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

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

61 [8.] **9.** Mental injury resulting from work-related stress does not arise out of and in the
62 course of the employment, unless it is demonstrated that the stress is work related and was
63 extraordinary and unusual. The amount of work stress shall be measured by objective standards
64 and actual events.

65 [9.] **10.** A mental injury is not considered to arise out of and in the course of the
66 employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff,
67 demotion, termination or any similar action taken in good faith by the employer.

68 [10.] **11.** The ability of a firefighter to receive benefits for psychological stress under
69 section 287.067 shall not be diminished by the provisions of subsections [8 and] **9 and 10** of this
70 section.

287.800. 1. Administrative law judges, associate administrative law judges, legal
2 advisors, the labor and industrial relations commission, the division of workers' compensation,
3 and any reviewing courts shall construe the provisions of this chapter strictly. **However, this**
4 **subsection shall not be construed to limit immunity for co-employees for negligence in**
5 **performing the nondelegable duty of employers to provide a safe workplace.**

6 2. Administrative law judges, associate administrative law judges, legal advisors, the
7 labor and industrial relations commission, and the division of workers' compensation shall weigh
8 the evidence impartially without giving the benefit of the doubt to any party when weighing
9 evidence and resolving factual conflicts.