

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 615

AN ACT

To repeal sections 287.040, 287.090, 287.140, 287.955, 287.957, and 287.975, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation, with an existing penalty provision.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 287.040, 287.090, 287.140, 287.955, 287.957, and 287.975, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.040, 287.090, 287.140, 287.221, 287.955, 287.957, and 287.975, to read as follows:

287.040. 1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

2. The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor but such independent contractor shall be deemed to be the employer of

1 the employees of his subcontractors and their subcontractors when
2 employed on or about the premises where the principal contractor
3 is doing work.

4 3. In all cases mentioned in the preceding subsections, the
5 immediate contractor or subcontractor shall be liable as an
6 employer of the employees of his subcontractors. All persons so
7 liable may be made parties to the proceedings on the application
8 of any party. The liability of the immediate employer shall be
9 primary, and that of the others secondary in their order, and any
10 compensation paid by those secondarily liable may be recovered
11 from those primarily liable, with attorney's fees and expenses of
12 the suit. Such recovery may be had on motion in the original
13 proceedings. No such employer shall be liable as in this section
14 provided, if the employee was insured by his immediate or any
15 intermediate employer.

16 4. The provisions of this section shall not apply to:

17 (1) The relationship between a for-hire motor carrier
18 operating within a commercial zone as defined in section 390.020
19 or 390.041 or operating under a certificate issued by the
20 Missouri department of transportation or by the United States
21 Department of Transportation, or any of its subagencies, and an
22 owner, as defined in subdivision [(43)] (42) of section 301.010,
23 and operator of a motor vehicle; or

24 (2) An independent contractor providing application of
25 agricultural materials used in crop dusting, seeding, spraying,
26 or fertilizing operations from an aircraft.

27 287.090. 1. This chapter shall not apply to:

28 (1) Employment of farm labor, domestic servants in a

1 private home, including family chauffeurs, or occasional labor
2 performed for and related to a private household;

3 (2) Qualified real estate agents and direct sellers as
4 those terms are defined in Section 3508 of Title 26 United States
5 Code;

6 (3) Employment where the person employed is an inmate
7 confined in a state prison, penitentiary or county or municipal
8 jail, or a patient or resident in a state mental health facility,
9 and the labor or services of such inmate, patient, or resident
10 are exclusively on behalf of the state, county or municipality
11 having custody of said inmate, patient, or resident. Nothing in
12 this subdivision is intended to exempt employment where the
13 inmate, patient or resident was hired by a state, county or
14 municipal government agency after direct competition with persons
15 who are not inmates, patients or residents and the compensation
16 for the position of employment is not contingent upon or affected
17 by the worker's status as an inmate, patient or resident;

18 (4) Except as provided in section 287.243, volunteers of a
19 tax-exempt organization which operates under the standards of
20 Section 501(c)(3) or Section 501(c)(19) of the federal Internal
21 Revenue Code, where such volunteers are not paid wages, but
22 provide services purely on a charitable and voluntary basis;

23 (5) Persons providing services as adjudicators, sports
24 officials, or contest workers for interscholastic activities
25 programs or similar amateur youth programs who are not otherwise
26 employed by the sponsoring school, association of schools or
27 nonprofit tax-exempt organization sponsoring the amateur youth
28 programs.

1 2. Any employer exempted from this chapter as to the
2 employer or as to any class of employees of the employer pursuant
3 to the provisions of subdivision (3) of subsection 1 of section
4 287.030 or pursuant to subsection 1 of this section may elect
5 coverage as to the employer or as to the class of employees of
6 that employer pursuant to this chapter by purchasing and
7 accepting a valid workers' compensation insurance policy or
8 endorsement, or by written notice to the group self-insurer of
9 which the employer is a member. The election shall take effect
10 on the effective date of the workers' compensation insurance
11 policy or endorsement, or by written notice to the group
12 self-insurer of which the employer is a member, and continue
13 while such policy or endorsement remains in effect or until
14 further written notice to the group self-insurer of which the
15 employer is a member. Any such exempt employer or employer with
16 an exempt class of employees may withdraw such election by the
17 cancellation or nonrenewal of the workers' compensation insurance
18 policy or endorsement, or by written notice to the group
19 self-insurer of which the employer is a member. In the event the
20 employer is electing out of coverage as to the employer, the
21 cancellation shall take effect on the later date of the
22 cancellation of the policy or the filing of notice pursuant to
23 subsection 3 of this section.

24 3. Any insurance company authorized to write insurance
25 under the provisions of this chapter in this state shall file
26 with the division a memorandum on a form prescribed by the
27 division of any workers' compensation policy issued to any
28 employer and of any renewal or cancellation thereof.

1 4. The mandatory coverage sections of this chapter shall
2 not apply to the employment of any member of a family owning a
3 family farm corporation as defined in section 350.010 or to the
4 employment of any salaried officer of a family farm corporation
5 organized pursuant to the laws of this state, but such family
6 members and officers of such family farm corporations may be
7 covered under a policy of workers' compensation insurance if
8 approved by a resolution of the board of directors. Nothing in
9 this subsection shall be construed to apply to any other type of
10 corporation other than a family farm corporation.

11 5. A corporation may withdraw from the provisions of this
12 chapter, when there are no more than two owners of the
13 corporation who are also the only employees of the corporation,
14 by filing with the division notice of election to be withdrawn.
15 The election shall take effect and continue from the date of
16 filing with the division by the corporation of the notice of
17 withdrawal from liability under this chapter. Any corporation
18 making such an election may withdraw its election by filing with
19 the division a notice to withdraw the election, which shall take
20 effect thirty days after the date of the filing, or at such later
21 date as may be specified in the notice of withdrawal.

22 287.140. 1. In addition to all other compensation paid to
23 the employee under this section, the employee shall receive and
24 the employer shall provide such medical, surgical, chiropractic,
25 and hospital treatment, including nursing, custodial, ambulance
26 and medicines, as may reasonably be required after the injury or
27 disability, to cure and relieve from the effects of the injury.
28 If the employee desires, he shall have the right to select his

1 own physician, surgeon, or other such requirement at his own
2 expense. Where the requirements are furnished by a public
3 hospital or other institution, payment therefor shall be made to
4 the proper authorities. Regardless of whether the health care
5 provider is selected by the employer or is selected by the
6 employee at the employee's expense, the health care provider
7 shall have the affirmative duty to communicate fully with the
8 employee regarding the nature of the employee's injury and
9 recommended treatment exclusive of any evaluation for a permanent
10 disability rating. Failure to perform such duty to communicate
11 shall constitute a disciplinary violation by the provider subject
12 to the provisions of chapter 620. When an employee is required
13 to submit to medical examinations or necessary medical treatment
14 at a place outside of the local or metropolitan area from the
15 employee's principal place of employment, the employer or its
16 insurer shall advance or reimburse the employee for all necessary
17 and reasonable expenses; except that an injured employee who
18 resides outside the state of Missouri and who is employed by an
19 employer located in Missouri shall have the option of selecting
20 the location of services provided in this section either at a
21 location within one hundred miles of the injured employee's
22 residence, place of injury or place of hire by the employer. The
23 choice of provider within the location selected shall continue to
24 be made by the employer. In case of a medical examination if a
25 dispute arises as to what expenses shall be paid by the employer,
26 the matter shall be presented to the legal advisor, the
27 administrative law judge or the commission, who shall set the sum
28 to be paid and same shall be paid by the employer prior to the

1 medical examination. In no event, however, shall the employer or
2 its insurer be required to pay transportation costs for a greater
3 distance than two hundred fifty miles each way from place of
4 treatment.

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

11 3. All fees and charges under this chapter shall be fair
12 and reasonable, shall be subject to regulation by the division or
13 the commission, or the board of rehabilitation in rehabilitation
14 cases. A health care provider shall not charge a fee for
15 treatment and care which is governed by the provisions of this
16 chapter greater than the usual and customary fee the provider
17 receives for the same treatment or service when the payor for
18 such treatment or service is a private individual or a private
19 health insurance carrier. The division or the commission, or the
20 board of rehabilitation in rehabilitation cases, shall also have
21 jurisdiction to hear and determine all disputes as to such
22 charges. A health care provider is bound by the determination
23 upon the reasonableness of health care bills.

24 4. The division shall, by regulation, establish methods to
25 resolve disputes concerning the reasonableness of medical
26 charges, services, or aids. This regulation shall govern
27 resolution of disputes between employers and medical providers
28 over fees charged, whether or not paid, and shall be in lieu of

1 any other administrative procedure under this chapter. The
2 employee shall not be a party to a dispute over medical charges,
3 nor shall the employee's recovery in any way be jeopardized
4 because of such dispute. Any application for payment of
5 additional reimbursement, as such term is used in 8 CSR 50-2.030,
6 as amended, shall be filed not later than:

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

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

13
14 Notice shall be presumed to occur no later than five business
15 days after [transmission by certified United States mail]
16 mailing. For the purposes of this section, the phrase "notice of
17 dispute" means a written explanation of benefits clearly
18 including the term "Notice of Fee Dispute," which prominently
19 evidences the payment is considered to be the full payment of the
20 fee or charge.

21 5. No compensation shall be payable for the death or
22 disability of an employee, if and insofar as the death or
23 disability may be caused, continued or aggravated by any
24 unreasonable refusal to submit to any medical or surgical
25 treatment or operation, the risk of which is, in the opinion of
26 the division or the commission, inconsiderable in view of the
27 seriousness of the injury. If the employee dies as a result of
28 an operation made necessary by the injury, the death shall be

1 deemed to be caused by the injury.

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

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

13 8. The employer may be required by the division or the
14 commission to furnish an injured employee with artificial legs,
15 arms, hands, surgical orthopedic joints, or eyes, or braces, as
16 needed, for life whenever the division or the commission shall
17 find that the injured employee may be partially or wholly
18 relieved of the effects of a permanent injury by the use thereof.
19 The director of the division shall establish a procedure whereby
20 a claim for compensation may be reactivated after settlement of
21 such claim is completed. The claim shall be reactivated only
22 after the claimant can show good cause for the reactivation of
23 this claim and the claim shall be made only for the payment of
24 medical procedures involving life-threatening surgical procedures
25 or if the claimant requires the use of a new, or the
26 modification, alteration or exchange of an existing, prosthetic
27 device. For the purpose of this subsection, "life threatening"
28 shall mean a situation or condition which, if not treated

1 immediately, will likely result in the death of the injured
2 worker.

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

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

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

20 (1) The patient;

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

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

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

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

28 13. (1) No hospital, physician or other health care

1 provider, other than a hospital, physician or health care
2 provider selected by the employee at his own expense pursuant to
3 subsection 1 of this section, shall bill or attempt to collect
4 any fee or any portion of a fee for services rendered to an
5 employee due to a work-related injury or report to any credit
6 reporting agency any failure of the employee to make such
7 payment, when an injury covered by this chapter has occurred and
8 such hospital, physician or health care provider has received
9 actual notice given in writing by the employee, the employer or
10 the employer's insurer. Actual notice shall be deemed received
11 by the hospital, physician or health care provider five days
12 after mailing [by certified mail] by the employer or insurer to
13 the hospital, physician or health care provider.

14 (2) The notice shall include:

15 (a) The name of the employer;

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

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

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

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

21 (3) When an injury is found to be noncompensable under this
22 chapter, the hospital, physician or other health care provider
23 shall be entitled to pursue the employee for any unpaid portion
24 of the fee or other charges for authorized services provided to
25 the employee. Any applicable statute of limitations for an
26 action for such fees or other charges shall be tolled from the
27 time notice is given to the division by a hospital, physician or
28 other health care provider pursuant to subdivision (6) of this

1 subsection, until a determination of noncompensability in regard
2 to the injury which is the basis of such services is made, or in
3 the event there is an appeal to the labor and industrial
4 relations commission, until a decision is rendered by that
5 commission.

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

14 (5) If an employer or insurer fails to make payment for
15 authorized services provided to the employee by a hospital,
16 physician or other health care provider pursuant to this chapter,
17 the hospital, physician or other health care provider may proceed
18 pursuant to subsection 4 of this section with a dispute against
19 the employer or insurer for any fees or other charges for
20 services provided.

21 (6) A hospital, physician or other health care provider
22 whose services have been authorized in advance by the employer or
23 insurer may give notice to the division of any claim for fees or
24 other charges for services provided for a work-related injury
25 that is covered by this chapter, with copies of the notice to the
26 employee, employer and the employer's insurer. Where such notice
27 has been filed, the administrative law judge may order direct
28 payment from the proceeds of any settlement or award to the

1 hospital, physician or other health care provider for such fees
2 as are determined by the division. The notice shall be on a form
3 prescribed by the division.

4 14. The employer may allow or require an employee to use
5 any of the employee's accumulated paid leave, personal leave, or
6 medical or sick leave to attend to medical treatment, physical
7 rehabilitation, or medical evaluations during work time. The
8 intent of this subsection is to specifically supercede and
9 abrogate any case law that contradicts the express language of
10 this section.

11 287.221. Notwithstanding the provisions of subsection 15 of
12 section 287.220 to the contrary, the division shall be authorized
13 to pay second injury fund liabilities for physical rehabilitation
14 payments under subsection 3 of section 287.141, medical expenses
15 under subsection 7 of section 287.220 incurred after a temporary
16 or final award of future medical benefits, and wage loss benefits
17 under subsection 11 of section 287.220.

18 287.955. 1. Every workers' compensation insurer shall
19 adhere to a uniform classification system and uniform experience
20 rating plan filed with the director by the advisory organization
21 designated by the director and subject to his disapproval.

22 2. An insurer may develop subclassifications of the uniform
23 classification system upon which a rate may be made, except that
24 such subclassifications shall be filed with the director thirty
25 days prior to their use. The director shall disapprove
26 subclassifications if the insurer fails to demonstrate that the
27 data thereby produced can be reported consistent with the uniform
28 statistical plan and classification system.

1 3. The director shall designate an advisory organization to
2 assist him in gathering, compiling and reporting relevant
3 statistical information. Every workers' compensation insurer
4 shall record and report its workers' compensation experience to
5 the designated advisory organization as set forth in the uniform
6 statistical plan approved by the director.

7 4. The designated advisory organization shall develop and
8 file manual rules, subject to the approval of the director,
9 reasonably related to the recording and reporting of data
10 pursuant to the uniform statistical plan, uniform experience
11 rating plan, and the uniform classification system.

12 5. Every workers' compensation insurer shall adhere to the
13 approved manual rules and experience rating plan in writing and
14 reporting its business. No insurer shall agree with any other
15 insurer or with the advisory organization to adhere to manual
16 rules which are not reasonably related to the recording and
17 reporting of data pursuant to the uniform classification system
18 of the uniform statistical plan.

19 6. [(1) A workers' compensation insurer may develop an
20 individual risk premium modification rating plan which
21 prospectively modifies premium based upon individual risk
22 characteristics which are predictive of future loss. Such rating
23 plan shall be filed thirty days prior to use and may be subject
24 to disapproval by the director.

25 (2) The rating plan shall establish objective standards for
26 measuring variations in individual risks for hazards or expense
27 or both. The rating plan shall be actuarially justified and
28 shall not result in premiums which are excessive, inadequate, or

1 unfairly discriminatory. The rating plan shall not utilize
2 factors which are duplicative of factors otherwise utilized in
3 the development of rates or premiums, including the uniform
4 classification system and the uniform experience rating plan.
5 The premium modification factors utilized under the rating plan
6 shall be applied on a statewide basis, with no premium
7 modifications based solely upon the geographic location of the
8 employer.

9 (3) Within thirty days of a request, the insurer shall
10 clearly disclose to the employer the individual risk
11 characteristics which result in premium modifications. However,
12 this disclosure shall not in any way require the release to the
13 insured employer of any trade secret or proprietary information
14 or data used to derive the premium modification and that meets
15 the definitions of, and is protected by, the provisions of
16 chapter 417.

17 (4) (a) Premium modifications [under this subsection] may
18 be determined by an underwriter assessing the individual risk
19 characteristics and applying premium credits and debits as
20 specified under a schedule rating plan. Alternatively, an
21 insurer may utilize software or a computer risk modeling system
22 designed to identify and assess individual risk characteristics
23 and which systematically and uniformly applies premium
24 modifications to similarly situated employers.

25 [(b) Premium modifications resulting from a schedule rating
26 plan, with an underwriter determining individual risk
27 characteristics, shall be limited to plus or minus twenty-five
28 percent. An additional ten percent credit may be given for a

1 reduction in the insurer's expenses.

2 (c) Premium modifications resulting from a risk modeling
3 system shall be limited to plus or minus fifty percent. Premium
4 modifications resulting from a risk modeling system shall be
5 reported separately under the uniform statistical plan from
6 premium modifications resulting from a schedule rating plan.

7 (d) Premium credits or reductions shall not be removed or
8 reduced unless there is a change in the insurer, the insurer
9 amends or withdraws the rating plan, or unless there is a
10 corresponding change in the insured employer's operations or risk
11 characteristics underlying the credit or reduction.】

12 287.957. The experience rating plan shall contain
13 reasonable eligibility standards, provide adequate incentives for
14 loss prevention, and shall provide for sufficient premium
15 differentials so as to encourage safety. The uniform experience
16 rating plan shall be the exclusive means of providing prospective
17 premium adjustment based upon measurement of the loss-producing
18 characteristics of an individual insured. An insurer may submit
19 a rating plan or plans providing for retrospective premium
20 adjustments based upon an insured's past experience. Such system
21 shall provide for retrospective adjustment of an experience
22 modification and premiums paid pursuant to such experience
23 modification where a prior reserved claim produced an experience
24 modification that varied by greater than fifty percent from the
25 experience modification that would have been established based on
26 the settlement amount of that claim. The rating plan shall
27 prohibit an adjustment to the experience modification of an
28 employer if the total medical cost does not exceed 【one thousand

1 dollars] twenty percent of the current split point of primary and
2 excess losses under the uniform experience rating plan, and the
3 employer pays all of the total medical costs and there is no lost
4 time from the employment, other than the first three days or less
5 of disability under subsection 1 of section 287.160, and no claim
6 is filed. An employer opting to utilize this provision maintains
7 an obligation to report the injury under subsection 1 of section
8 287.380.

9 287.975. 1. The advisory organization shall file with the
10 director every pure premium rate, every manual of rating rules,
11 every rating schedule and every change or amendment, or
12 modification of any of the foregoing, proposed for use in this
13 state no more than thirty days after it is distributed to
14 members, subscribers or others.

15 2. The advisory organization which makes a uniform
16 classification system for use in setting rates in this state
17 shall collect data for two years after January 1, 1994, on the
18 payroll differential between employers within the construction
19 group of code classifications, including, but not limited to,
20 payroll costs of the employer and number of hours worked by all
21 employees of the employer engaged in construction work. Such
22 data shall be transferred to the department of insurance,
23 financial institutions and professional registration in a form
24 prescribed by the director of the department of insurance,
25 financial institutions and professional registration, and the
26 department shall compile the data and develop a formula to
27 equalize premium rates for employers within the construction
28 group of code classifications based on such payroll differential

1 within three years after the data is submitted by the advisory
2 organization.

3 3. The formula to equalize premium rates for employers
4 within the construction group of code classifications established
5 under subsection 2 of this section shall be the formula in effect
6 on January 1, 1999. This subsection shall become effective on
7 January 1, 2014.

8 4. For the purposes of calculating the premium credit under
9 the Missouri contracting classification premium adjustment
10 program, an employer within the construction group of code
11 classifications may submit to the advisory organization the
12 required payroll record information for the first, second, third,
13 or fourth calendar quarter of the year prior to the workers'
14 compensation policy beginning or renewal date, provided that the
15 employer clearly indicates for which quarter the payroll
16 information is being submitted.

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