

SECOND REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1955

98TH GENERAL ASSEMBLY

5412H.02C

D. ADAM CRUMBLISS, Chief Clerk

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## 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 six new sections relating to workers' compensation, with an existing penalty provision.

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*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Section A. Sections 287.040, 287.090, 287.140, 287.955, 287.957, and 287.975, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 287.040, 287.090, 287.140, 287.955, 287.957, and 287.975, to read as follows: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 the employees of his subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.

3. In all cases mentioned in the preceding subsections, the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable,

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 with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original  
17 proceedings. No such employer shall be liable as in this section provided, if the employee was  
18 insured by his immediate or any intermediate employer.

19 4. The provisions of this section shall not apply to the relationship between a for-hire  
20 motor carrier operating within a commercial zone as defined in section 390.020 or 390.041 or  
21 operating under a certificate issued by the Missouri department of transportation or by the United  
22 States Department of Transportation, or any of its subagencies, and an owner, as defined in  
23 subdivision [(43)] (42) of section 301.010, and operator of a motor vehicle.

287.090. 1. This chapter shall not apply to:

2 (1) Employment of farm labor, domestic servants in a private home, including family  
3 chauffeurs, or occasional labor performed for and related to a private household;

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

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

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

18 (5) Persons providing services as adjudicators, sports officials, or contest workers for  
19 interscholastic activities programs or similar amateur youth programs who are not otherwise  
20 employed by the sponsoring school, association of schools or nonprofit tax-exempt organization  
21 sponsoring the amateur youth programs.

22 2. Any employer exempted from this chapter as to the employer or as to any class of  
23 employees of the employer pursuant to the provisions of subdivision (3) of subsection 1 of  
24 section 287.030 or pursuant to subsection 1 of this section may elect coverage as to the employer  
25 or as to the class of employees of that employer pursuant to this chapter by purchasing and  
26 accepting a valid workers' compensation insurance policy or endorsement, or by written notice  
27 to the group self-insurer of which the employer is a member. The election shall take effect on  
28 the effective date of the workers' compensation insurance policy or endorsement, or by written  
29 notice to the group self-insurer of which the employer is a member, and continue while such

30 policy or endorsement remains in effect or until further written notice to the group self-insurer  
31 of which the employer is a member. Any such exempt employer or employer with an exempt  
32 class of employees may withdraw such election by the cancellation or nonrenewal of the workers'  
33 compensation insurance policy or endorsement, or by written notice to the group self-insurer of  
34 which the employer is a member. In the event the employer is electing out of coverage as to the  
35 employer, the cancellation shall take effect on the later date of the cancellation of the policy or  
36 the filing of notice pursuant to subsection 3 of this section.

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

41 4. The mandatory coverage sections of this chapter shall not apply to the employment  
42 of any member of a family owning a family farm corporation as defined in section 350.010 or  
43 to the employment of any salaried officer of a family farm corporation organized pursuant to the  
44 laws of this state, but such family members and officers of such family farm corporations may  
45 be covered under a policy of workers' compensation insurance if approved by a resolution of the  
46 board of directors. Nothing in this subsection shall be construed to apply to any other type of  
47 corporation other than a family farm corporation.

48 5. A corporation may withdraw from the provisions of this chapter, when there are no  
49 more than two owners of the corporation who are also the only employees of the corporation, by  
50 filing with the division notice of election to be withdrawn. The election shall take effect and  
51 continue from the date of filing with the division by the corporation of the notice of withdrawal  
52 from liability under this chapter. Any corporation making such an election may withdraw its  
53 election by filing with the division a notice to withdraw the election, which shall take effect  
54 thirty days after the date of the filing, or at such later date as may be specified in the notice of  
55 withdrawal.

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. If the employee desires, he shall have the right to select his own physician, surgeon,  
6 or other such requirement at his own expense. Where the requirements are furnished by a public  
7 hospital or other institution, payment therefor shall be made to the proper authorities. Regardless  
8 of whether the health care provider is selected by the employer or is selected by the employee  
9 at the employee's expense, the health care provider shall have the affirmative duty to  
10 communicate fully with the employee regarding the nature of the employee's injury and  
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure

12 to perform such duty to communicate shall constitute a disciplinary violation by the provider  
13 subject to the provisions of chapter 620. When an employee is required to submit to medical  
14 examinations or necessary medical treatment at a place outside of the local or metropolitan area  
15 from the employee's principal place of employment, the employer or its insurer shall advance or  
16 reimburse the employee for all necessary and reasonable expenses; except that an injured  
17 employee who resides outside the state of Missouri and who is employed by an employer located  
18 in Missouri shall have the option of selecting the location of services provided in this section  
19 either at a location within one hundred miles of the injured employee's residence, place of injury  
20 or place of hire by the employer. The choice of provider within the location selected shall  
21 continue to be made by the employer. In case of a medical examination if a dispute arises as to  
22 what expenses shall be paid by the employer, the matter shall be presented to the legal advisor,  
23 the administrative law judge or the commission, who shall set the sum to be paid and same shall  
24 be paid by the employer prior to the medical examination. In no event, however, shall the  
25 employer or its insurer be required to pay transportation costs for a greater distance than two  
26 hundred fifty miles each way from place of treatment.

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

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

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

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

49 (2) One year 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 after July 1, 2013.

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52 Notice shall be presumed to occur no later than five business days after [transmission by certified  
53 United States mail] **mailing. Notice shall be sent by United States Postal Service certificate  
54 of mailing, first class mail using Intelligent Mail barcode (IMb), or another mail tracking  
55 method used, approved, or accepted by the United States Postal Service.**

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.

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

4 2. An insurer may develop subclassifications of the uniform classification system upon  
5 which a rate may be made, except that such subclassifications shall be filed with the director  
6 thirty days prior to their use. The director shall disapprove subclassifications if the insurer fails  
7 to demonstrate that the data thereby produced can be reported consistent with the uniform  
8 statistical plan and classification system.

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

13           4. The designated advisory organization shall develop and file manual rules, subject to  
14 the approval of the director, reasonably related to the recording and reporting of data pursuant  
15 to the uniform statistical plan, uniform experience rating plan, and the uniform classification  
16 system.

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

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

26           (2) **Premium modifications under this subsection may be determined by an**  
27 **underwriter assessing the individual risk characteristics and applying premium credits and**  
28 **debits as specified under a schedule rating plan. Alternatively, an insurer may utilize**  
29 **software or a computer risk modeling system designed to identify and assess individual risk**  
30 **characteristics and which systematically and uniformly applies premium modifications to**  
31 **similarly situated employers.** The rating plan shall establish objective standards for measuring  
32 variations in individual risks for hazards or expense or both. [The rating plan shall be actuarially  
33 justified and shall not result in premiums which are excessive, inadequate, or unfairly  
34 discriminatory.] The rating plan shall not utilize factors which are duplicative of factors  
35 otherwise utilized in the development of rates or premiums, including the uniform classification  
36 system and the uniform experience rating plan. [The premium modification factors utilized  
37 under the rating plan shall be applied on a statewide basis, with no premium modifications] **No**  
38 **premium modification factors shall be** based solely upon the geographic location of the  
39 employer.

40           (a) **Premium modifications resulting from a schedule rating plan, with an**  
41 **underwriter determining individual risk characteristics, shall be limited to plus or minus**  
42 **twenty-five percent. Up to an additional ten percent credit may be given for a reduction**  
43 **in the insurer's expenses.**

44           (b) **Premium modifications resulting from a risk modeling system shall be limited**  
45 **to plus or minus fifty percent. Premium modifications resulting from a risk modeling**  
46 **system shall be reported separately under the uniform statistical plan from premium**  
47 **modifications resulting from a schedule rating plan.**

48           **(c) Changes in premium modification factors may occur if there is a change in the**  
49 **insurer, the insurer amends or withdraws the rating plan, or if there is a change in the**  
50 **insured employer's operations or risk characteristics underlying the premium modification**  
51 **factor.**

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

57           [(4) (a) Premium modifications under this subsection may be determined by an  
58 underwriter assessing the individual risk characteristics and applying premium credits and debits  
59 as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a  
60 computer risk modeling system designed to identify and assess individual risk characteristics and  
61 which systematically and uniformly applies premium modifications to similarly situated  
62 employers.

63           (b) Premium modifications resulting from a schedule rating plan, with an underwriter  
64 determining individual risk characteristics, shall be limited to plus or minus twenty-five percent.  
65 An additional ten percent credit may be given for a reduction in the insurer's expenses.

66           (c) Premium modifications resulting from a risk modeling system shall be limited to plus  
67 or minus fifty percent. Premium modifications resulting from a risk modeling system shall be  
68 reported separately under the uniform statistical plan from premium modifications resulting from  
69 a schedule rating plan.

70           (d) Premium credits or reductions shall not be removed or reduced unless there is a  
71 change in the insurer, the insurer amends or withdraws the rating plan, or unless there is a  
72 corresponding change in the insured employer's operations or risk characteristics underlying the  
73 credit or reduction.]

          287.957. The experience rating plan shall contain reasonable eligibility standards,  
2 provide adequate incentives for loss prevention, and shall provide for sufficient premium  
3 differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive  
4 means of providing prospective premium adjustment based upon measurement of the  
5 loss-producing characteristics of an individual insured. An insurer may submit a rating plan or  
6 plans providing for retrospective premium adjustments based upon an insured's past experience.  
7 Such system shall provide for retrospective adjustment of an experience modification and  
8 premiums paid pursuant to such experience modification where a prior reserved claim produced  
9 an experience modification that varied by greater than fifty percent from the experience  
10 modification that would have been established based on the settlement amount of that claim.  
11 The rating plan shall prohibit an adjustment to the experience modification of an employer if the

12 total medical cost does not exceed [one thousand dollars] **twenty percent of the current split**  
13 **point of primary and excess losses under the uniform experience rating plan**, and the  
14 employer pays all of the total medical costs and there is no lost time from the employment, other  
15 than the first three days or less of disability under subsection 1 of section 287.160, and no claim  
16 is filed. An employer opting to utilize this provision maintains an obligation to report the injury  
17 under subsection 1 of section 287.380.

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

5 2. The advisory organization which makes a uniform classification system for use in  
6 setting rates in this state shall collect data for two years after January 1, 1994, on the payroll  
7 differential between employers within the construction group of code classifications, including,  
8 but not limited to, payroll costs of the employer and number of hours worked by all employees  
9 of the employer engaged in construction work. Such data shall be transferred to the department  
10 of insurance, financial institutions and professional registration in a form prescribed by the  
11 director of the department of insurance, financial institutions and professional registration, and  
12 the department shall compile the data and develop a formula to equalize premium rates for  
13 employers within the construction group of code classifications based on such payroll differential  
14 within three years after the data is submitted by the advisory organization.

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

18 **4. For the purposes of calculating the premium credit under the Missouri**  
19 **contracting classification premium adjustment program, an employer within the**  
20 **construction group of code classifications may submit to the advisory organization the**  
21 **required payroll record information for the first, second, third, or fourth calendar quarter**  
22 **of the year prior to the workers' compensation policy beginning or renewal date, provided**  
23 **that the employer clearly indicates for which quarter the payroll information is being**  
24 **submitted.**

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