

SECOND REGULAR SESSION

HOUSE BILL NO. 1123

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), ROORDA, BAKER (25),
WHORTON AND YOUNG (Co-sponsors).

Pre-filed December 14, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3483L.01I

AN ACT

To repeal sections 287.067 and 287.140, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation benefits, with penalty provisions.

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

Section A. Sections 287.067 and 287.140, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 287.067 and 287.140, to read as follows:

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,
2 unless a different meaning is clearly indicated by the context, an identifiable disease arising with
3 or without human fault out of and in the course of the employment. Ordinary diseases of life to
4 which the general public is exposed outside of the employment shall not be compensable, except
5 where the diseases follow as an incident of an occupational disease as defined in this section.
6 The disease need not to have been foreseen or expected but after its contraction it must appear
7 to have had its origin in a risk connected with the employment and to have flowed from that
8 source as a rational consequence.

9 2. An injury by occupational disease is compensable only if the occupational exposure
10 was the prevailing factor in causing both the resulting medical condition and disability. The
11 "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both
12 the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive
13 degeneration of the body caused by aging or by the normal activities of day-to-day living shall
14 not be compensable.

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.

15 3. An injury due to repetitive motion is recognized as an occupational disease for
16 purposes of this chapter. An occupational disease due to repetitive motion is compensable only
17 if the occupational exposure was the prevailing factor in causing both the resulting medical
18 condition and disability. The "prevailing factor" is defined to be the primary factor, in relation
19 to any other factor, causing both the resulting medical condition and disability. Ordinary,
20 gradual deterioration, or progressive degeneration of the body caused by aging or by the normal
21 activities of day-to-day living shall not be compensable.

22 4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for
23 purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to
24 prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of
25 producing occupational deafness.

26 5. "Radiation disability" is recognized as an occupational disease for purposes of this
27 chapter and is hereby defined to be that disability due to radioactive properties or substances or
28 to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the
29 use of or direct contact with radium or radioactive properties or substances or the use of or direct
30 exposure to Roentgen rays (X-rays) or ionizing radiation.

31 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the
32 heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases
33 for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases,
34 carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police
35 officers of a paid police department certified under chapter 590, RSMo, if a direct causal
36 relationship is established, or psychological stress of firefighters of a paid fire department **and**
37 **peace officers certified under chapter 590, RSMo**, if a direct causal relationship is established.

38 7. Any employee who is exposed to and contracts any contagious or communicable
39 disease arising out of and in the course of his or her employment shall be eligible for benefits
40 under this chapter as an occupational disease.

41 8. With regard to occupational disease due to repetitive motion, if the exposure to the
42 repetitive motion which is found to be the cause of the injury is for a period of less than three
43 months and the evidence demonstrates that the exposure to the repetitive motion with the
44 immediate prior employer was the prevailing factor in causing the injury, the prior employer
45 shall be liable for such occupational disease.

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, **which shall include heart and lung examinations administered to firefighters of**

6 **a paid fire department and peace officers certified under chapter 590, RSMo.** If the
7 employee desires, he shall have the right to select his own physician, surgeon, or other such
8 requirement at his own expense. Where the requirements are furnished by a public hospital or
9 other institution, payment therefor shall be made to the proper authorities. Regardless of whether
10 the health care provider is selected by the employer or is selected by the employee at the
11 employee's expense, the health care provider shall have the affirmative duty to communicate
12 fully with the employee regarding the nature of the employee's injury and recommended
13 treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such
14 duty to communicate shall constitute a disciplinary violation by the provider subject to the
15 provisions of chapter 620, RSMo. When an employee is required to submit to medical
16 examinations or necessary medical treatment at a place outside of the local or metropolitan area
17 from the employee's principal place of employment, the employer or its insurer shall advance or
18 reimburse the employee for all necessary and reasonable expenses; except that an injured
19 employee who resides outside the state of Missouri and who is employed by an employer located
20 in Missouri shall have the option of selecting the location of services provided in this section
21 either at a location within one hundred miles of the injured employee's residence, place of injury
22 or place of hire by the employer. The choice of provider within the location selected shall
23 continue to be made by the employer. In case of a medical examination if a dispute arises as to
24 what expenses shall be paid by the employer, the matter shall be presented to the legal advisor,
25 the administrative law judge or the commission, who shall set the sum to be paid and same shall
26 be paid by the employer prior to the medical examination. In no event, however, shall the
27 employer or its insurer be required to pay transportation costs for a greater distance than two
28 hundred fifty miles each way from place of treatment.

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

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

42 4. The division shall, by regulation, establish methods to resolve disputes concerning the
43 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
44 disputes between employers and medical providers over fees charged, whether or not paid, and
45 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
46 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
47 jeopardized because of such dispute.

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

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

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

62 8. The employer may be required by the division or the commission to furnish an injured
63 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as
64 needed, for life whenever the division or the commission shall find that the injured employee
65 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The
66 director of the division shall establish a procedure whereby a claim for compensation may be
67 reactivated after settlement of such claim is completed. The claim shall be reactivated only after
68 the claimant can show good cause for the reactivation of this claim and the claim shall be made
69 only for the payment of medical procedures involving life-threatening surgical procedures or if
70 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,
71 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation
72 or condition which, if not treated immediately, will likely result in the death of the injured
73 worker.

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

76 10. The employer shall have the right to select the licensed treating physician, surgeon,
77 chiropractic physician, or other health care provider; provided, however, that such physicians,

78 surgeons or other health care providers shall offer only those services authorized within the scope
79 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
80 apply.

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

86 (1) The patient;

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

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

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

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

92 13. (1) No hospital, physician or other health care provider, other than a hospital,
93 physician or health care provider selected by the employee at his own expense pursuant to
94 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
95 services rendered to an employee due to a work-related injury or report to any credit reporting
96 agency any failure of the employee to make such payment, when an injury covered by this
97 chapter has occurred and such hospital, physician or health care provider has received actual
98 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
99 shall be deemed received by the hospital, physician or health care provider five days after
100 mailing by certified mail by the employer or insurer to the hospital, physician or health care
101 provider.

102 (2) The notice shall include:

103 (a) The name of the employer;

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

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

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

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

108 (3) When an injury is found to be noncompensable under this chapter, the hospital,
109 physician or other health care provider shall be entitled to pursue the employee for any unpaid
110 portion of the fee or other charges for authorized services provided to the employee. Any
111 applicable statute of limitations for an action for such fees or other charges shall be tolled from
112 the time notice is given to the division by a hospital, physician or other health care provider
113 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in

114 regard to the injury which is the basis of such services is made, or in the event there is an appeal
115 to the labor and industrial relations commission, until a decision is rendered by that commission.

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

121 (5) If an employer or insurer fails to make payment for authorized services provided to
122 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
123 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
124 section with a dispute against the employer or insurer for any fees or other charges for services
125 provided.

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

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

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