

FIRST REGULAR SESSION

# HOUSE BILL NO. 248

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COLONA.

0813L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 287.140 and 287.141, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation, with a penalty provision.

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

Section A. Sections 287.140 and 287.141, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 287.140 and 287.141, to read as follows:

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  
7 public hospital or other institution, payment therefor shall be made to the proper authorities.  
8 Regardless of whether the health care provider is selected by the employer or is selected by the  
9 employee 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

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.

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.

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

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

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

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

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

82           10. The employer [shall have the right to] **may** select the licensed treating physician,  
83 surgeon, chiropractic physician, or other health care provider **if no selection is made by the**  
84 **employee**; provided, however, that such physicians, surgeons or other health care providers shall  
85 offer only those services authorized within the scope of their licenses. For the purpose of this  
86 subsection, subsection 2 of section 287.030 shall not apply.

87           11. Any physician or other health care provider who orders, directs or refers a patient for  
88 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the  
89 time of the referral, disclose in writing if such health care provider, any of his partners or his

90 employer has a financial interest in the institution or facility to which the patient is being  
91 referred, to the following:

92 (1) The patient;

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

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

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

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

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

108 (2) The notice shall include:

109 (a) The name of the employer;

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

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

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

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

114 (3) When an injury is found to be noncompensable under this chapter, the hospital,  
115 physician or other health care provider shall be entitled to pursue the employee for any unpaid  
116 portion of the fee or other charges for authorized services provided to the employee. Any  
117 applicable statute of limitations for an action for such fees or other charges shall be tolled from  
118 the time notice is given to the division by a hospital, physician or other health care provider  
119 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in  
120 regard to the injury which is the basis of such services is made, or in the event there is an appeal  
121 to the labor and industrial relations commission, until a decision is rendered by that commission.

122 (4) If a hospital, physician or other health care provider or a debt collector on behalf of  
123 such hospital, physician or other health care provider pursues any action to collect from an  
124 employee after such notice is properly given, the employee shall have a cause of action against

125 the hospital, physician or other health care provider for actual damages sustained plus up to one  
126 thousand dollars in additional damages, costs and reasonable attorney's fees.

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

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

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

287.141. 1. The purpose of this section is to restore the injured person as soon as  
2 possible and as nearly as possible to a condition of self-support and maintenance as an  
3 able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical  
4 rehabilitation shall be under the control of and administered by the director of the division of  
5 workers' compensation. The division of workers' compensation shall make such rules and  
6 regulations as may be necessary to carry out the purposes of this section, subject to the approval  
7 of the labor and industrial relations commission of Missouri.

8 2. The division of workers' compensation shall continuously study the problems of  
9 physical rehabilitation and shall investigate all rehabilitation facilities, both private and public,  
10 and upon such investigation shall approve as qualified all such facilities, institutions and  
11 physicians as are capable of rendering competent physical rehabilitation service for seriously  
12 injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and  
13 physical restoration services. No facility or institution shall be considered as qualified unless it  
14 is equipped to provide physical rehabilitation services for persons suffering either from some  
15 specialized type of disability or general type of disability within the field of industrial injury, and  
16 unless such facility or institution is operated under the supervision of a physician qualified to

17 render physical rehabilitation service and is staffed with trained and qualified personnel and has  
18 received a certificate of qualification from the division of workers' compensation. No physician  
19 shall be considered as qualified unless he has had the experience prescribed by the division.

20         3. In any case of serious injury involving disability following the period of rendition of  
21 medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is  
22 necessary if the employer or insurer shall offer such physical rehabilitation to the injured  
23 employee and such physical rehabilitation is accepted by the employee, then in such case the  
24 director of the division of workers' compensation shall be immediately notified thereof and  
25 thereupon enter his approval to such effect, and the director of the division of workers'  
26 compensation shall requisition the payment of forty dollars per week benefit from the second  
27 injury fund in the state treasury to be paid to the employee while he is actually being  
28 rehabilitated, and shall immediately notify the state treasurer thereof by furnishing him with a  
29 copy of his order. But in no case shall the period of physical rehabilitation extend beyond twenty  
30 weeks except in unusual cases and then only by a special order of the division of workers'  
31 compensation for such additional period as the division may authorize.

32         4. In all cases where physical rehabilitation is offered and accepted or ordered by the  
33 division, the employer or insurer [shall have the right to] **may** select any physician, facility, or  
34 institution that has been found qualified by the division of workers' compensation as above set  
35 forth **if no selection is made by the employee.**

36         5. If the parties disagree as to such physical rehabilitation treatment, where such  
37 treatment appears necessary, then either the employee, the employer, or insurer may file a request  
38 with the division of workers' compensation for an order for physical rehabilitation and the  
39 director of the division shall hear the parties within ten days after the filing of the request. The  
40 director of the division shall forthwith notify the parties of the time and place of the hearing, and  
41 the hearing shall be held at a place to be designated at the discretion of the division. The director  
42 of the division may conduct such hearing or he may direct one of the administrative law judges  
43 to conduct same. Such hearing shall be informal in all respects. The director of the division  
44 shall, after considering all evidence at such hearing, within ten days make his order in the matter,  
45 either denying such request or ordering the employer or insurer within a reasonable time, to  
46 furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of  
47 the employer or insurer. When the order requires physical rehabilitation, it shall also include an  
48 order to requisition the payment of forty dollars per week out of the second injury fund in the  
49 state treasury to the injured employee during such time as such employee is actually receiving  
50 physical rehabilitation.

51           6. In every case where physical rehabilitation shall be ordered, the director of the  
52 division may, in his discretion, order the employer or insurer to furnish transportation to the  
53 injured employee to such rehabilitation facility or institution.

54           7. As used in this section, the term "physical rehabilitation" shall be deemed to include  
55 medical, surgical and hospital treatment in the same respect as required to be furnished under  
56 subsection 1 of section 287.140.

57           8. An appeal from any order of the division of workers' compensation hereby created to  
58 the appellate court may be taken and governed in all respects in the same manner as appeals in  
59 workers' compensation cases generally under section 287.495.

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