

FIRST REGULAR SESSION

# HOUSE BILL NO. 1253

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CLEMENS.

2520H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 287.210, RSMo, and to enact in lieu thereof one new section relating to determination of coverage under workers' compensation insurance.

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

Section A. Section 287.210, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.210, to read as follows:

- 287.210. 1. After an employee has received an injury he shall from time to time thereafter during disability submit to reasonable medical examination at the request of the employer, the employer's insurer, the commission, the division, an administrative law judge, or the attorney general on behalf of the second injury fund if the employer has not obtained a medical examination report, the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee may have his own physician present, and if the employee refuses to submit to the examination, or in any way obstructs it, his right to compensation shall be forfeited during such period unless in the opinion of the commission the circumstances justify the refusal or obstruction.
2. The commission, the division or administrative law judge shall, when deemed necessary, appoint a duly qualified impartial physician to examine the injured employee, and any physician so chosen, if he accepts the appointment, shall promptly make the examination requested and make a complete medical report to the commission or the division in such duplication as to provide all parties with copies thereof. The physician's fee shall be fair and reasonable, as provided in subsection 3 of section 287.140, and the fee and other reasonable costs of the impartial examination may be paid as other costs under this chapter. If all the parties shall have had reasonable access thereto, the report of the physician shall be admissible in evidence.

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           3. The testimony of any physician who treated or examined the injured employee shall  
19 be admissible in evidence in any proceedings for compensation under this chapter, but only if  
20 the medical report of the physician has been made available to all parties as in this section  
21 provided. Immediately upon receipt of notice from the division or the commission setting a date  
22 for hearing of a case in which the nature and extent of an employee's disability is to be  
23 determined, the parties or their attorneys shall arrange, without charge or costs, each to the other,  
24 for an exchange of all medical reports, including those made both by treating and examining  
25 physician or physicians, to the end that the parties may be commonly informed of all medical  
26 findings and opinions. The exchange of medical reports shall be made at least seven days before  
27 the date set for the hearing and failure of any party to comply may be grounds for asking for and  
28 receiving a continuance, upon proper showing by the party to whom the medical reports were  
29 not furnished. If any party fails or refuses to furnish the opposing party with the medical report  
30 of the treating or examining physician at least seven days before such physician's deposition or  
31 personal testimony at the hearing, as in this section provided, upon the objection of the party who  
32 was not provided with the medical report, the physician shall not be permitted to testify at that  
33 hearing or by medical deposition.

34           4. Upon request, an administrative law judge, the division, or the commission shall be  
35 provided with a copy of any medical report.

36           5. As used in this chapter the terms "physician's report" and "medical report" mean the  
37 report of any physician made on any printed form authorized by the division or the commission  
38 or any complete medical report. As used in this chapter the term "complete medical report"  
39 means the report of a physician giving the physician's qualifications and the patient's history,  
40 complaints, details of the findings of any and all laboratory, X-ray and all other technical  
41 examinations, diagnosis, prognosis, nature of disability, if any, and an estimate of the percentage  
42 of permanent partial disability, if any. An element or elements of a complete medical report may  
43 be met by the physician's records.

44           6. **No later than thirty days after an insurer receives a complete medical report for**  
45 **a possible work-related injury, the workers' compensation insurer shall notify the injured**  
46 **employee in writing of any additional information needed to determine whether the injured**  
47 **employee is covered under workers' compensation insurance. If the workers'**  
48 **compensation insurer has received all medical information necessary to make a**  
49 **determination, such insurer shall make a determination within fifteen days.**

50           7. Upon the request of a party, the physician or physicians who treated or are treating the  
51 injured employee shall be required to furnish to the parties a rating and complete medical report  
52 on the injured employee, at the expense of the party selecting the physician, along with a

53 complete copy of the physician's clinical record including copies of any records and reports  
54 received from other health care providers.

55       ~~[7.]~~ **8.** The testimony of a treating or examining physician may be submitted in evidence  
56 on the issues in controversy by a complete medical report and shall be admissible without other  
57 foundational evidence subject to compliance with the following procedures. The party intending  
58 to submit a complete medical report in evidence shall give notice at least sixty days prior to the  
59 hearing to all parties and shall provide reasonable opportunity to all parties to obtain  
60 cross-examination testimony of the physician by deposition. The notice shall include a copy of  
61 the report and all the clinical and treatment records of the physician including copies of all  
62 records and reports received by the physician from other health care providers. The party  
63 offering the report must make the physician available for cross-examination testimony by  
64 deposition not later than seven days before the matter is set for hearing, and each cross-examiner  
65 shall compensate the physician for the portion of testimony obtained in an amount not to exceed  
66 a rate of reasonable compensation taking into consideration the specialty practiced by the  
67 physician. Cross-examination testimony shall not bind the cross-examining party. Any  
68 testimony obtained by the offering party shall be at that party's expense on a proportional basis,  
69 including the deposition fee of the physician. Upon request of any party, the party offering a  
70 complete medical report in evidence must also make available copies of X rays or other  
71 diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of  
72 such notice a party shall dispute whether a report meets the requirements of a complete medical  
73 report by providing written objections to the offering party stating the grounds for the dispute,  
74 and at the request of any party, the administrative law judge shall rule upon such objections upon  
75 pretrial hearing whether the report meets the requirements of a complete medical report and upon  
76 the admissibility of the report or portions thereof. If no objections are filed the report is  
77 admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the  
78 parties from agreeing to admit medical reports or records by consent.

79       ~~[8.]~~ **9.** Certified copies of the proceedings before any coroner holding an inquest over  
80 the body of any employee receiving an injury in the course of his employment resulting in death  
81 shall be admissible in evidence in any proceedings for compensation under this chapter, and it  
82 shall be the duty of the coroner to give notice of the inquest to the employer and the dependents  
83 of the deceased employee, who shall have the right to cross-examine the witness.

84       ~~[9.]~~ **10.** The division or the commission may in its discretion in extraordinary cases order  
85 a postmortem examination and for that purpose may also order a body exhumed.

✓