

FIRST REGULAR SESSION

HOUSE BILL NO. 596

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CLEMENS.

1704H.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Section A. Section 287.210, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.210, to read as follows: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

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 parties shall have had reasonable access thereto, the report of the physician shall be
19 admissible in evidence.

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

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

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

46 6. **Not later than thirty days after an insurer receives a complete medical report**
47 **for a possible work-related injury, the insurer shall notify the injured employee in**
48 **writing of any additional information needed to determine whether the injured**
49 **employee is covered under workers' compensation insurance. If the workers'**
50 **compensation insurer has received all medical information necessary to make a**
51 **determination, such insurer shall make a determination within fifteen days.**

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

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

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

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

87 ~~[9-]~~ **10.** The division or the commission may in its discretion in extraordinary cases
88 order a postmortem examination and for that purpose may also order a body exhumed.

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