

SECOND REGULAR SESSION

SENATE BILL NO. 1052

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

5741S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 287.140 and 287.210, RSMo, and to enact in lieu thereof two new sections relating to establishing a fee schedule for services performed pursuant to the workers' compensation law, with penalty provisions.

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

Section A. Sections 287.140 and 287.210, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 287.140 and 287.210, to read as follows:

287.140. 1. In addition to all other compensation
2 paid to the employee under this section, the employee shall
3 receive and the employer shall provide such medical,
4 surgical, chiropractic, and hospital treatment, including
5 nursing, custodial, ambulance and medicines, as may
6 reasonably be required after the injury or disability, to
7 cure and relieve from the effects of the injury. If the
8 employee desires, he shall have the right to select his own
9 physician, surgeon, or other such requirement at his own
10 expense. Where the requirements are furnished by a public
11 hospital or other institution, payment therefor shall be
12 made to the proper authorities. Regardless of whether the
13 health care provider is selected by the employer or is
14 selected by the employee at the employee's expense, the
15 health care provider shall have the affirmative duty to
16 communicate fully with the employee regarding the nature of

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

44 2. If it be shown to the division or the commission
45 that the requirements are being furnished in such manner
46 that there is reasonable ground for believing that the life,
47 health, or recovery of the employee is endangered thereby,

48 the division or the commission may order a change in the
49 physician, surgeon, hospital or other requirement.

50 **3. The division shall establish by rule a schedule of**
51 **fees for any service provided pursuant to this chapter.** All
52 fees and charges under this chapter shall be [fair and
53 reasonable, shall be] in accordance with the fee schedule
54 promulgated by the division and subject to regulation by the
55 division or the commission, or the board of rehabilitation
56 in rehabilitation cases. A health care provider shall not
57 charge a fee for treatment and care which is governed by the
58 provisions of this chapter greater than [the usual and
59 customary fee the provider receives for the same treatment
60 or service when the payor for such treatment or service is a
61 private individual or a private health insurance carrier]
62 **that allowed pursuant to the fee schedule promulgated by the**
63 **division.** The division or the commission, or the board of
64 rehabilitation in rehabilitation cases, shall also have
65 jurisdiction to hear and determine all disputes as to such
66 charges. A health care provider is bound by the
67 determination upon the reasonableness of health care bills.

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

84 (2) One year from the date the first notice of dispute
85 of the medical charge was received by the health care
86 provider if such services were rendered after July 1, 2013.

87 Notice shall be presumed to occur no later than five
88 business days after transmission by certified United States
89 mail.

90 5. No compensation shall be payable for the death or
91 disability of an employee, if and insofar as the death or
92 disability may be caused, continued or aggravated by any
93 unreasonable refusal to submit to any medical or surgical
94 treatment or operation, the risk of which is, in the opinion
95 of the division or the commission, inconsiderable in view of
96 the seriousness of the injury. If the employee dies as a
97 result of an operation made necessary by the injury, the
98 death shall be deemed to be caused by the injury.

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

103 7. Every hospital or other person furnishing the
104 employee with medical aid shall permit its record to be
105 copied by and shall furnish full information to the division
106 or the commission, the employer, the employee or his
107 dependents and any other party to any proceedings for
108 compensation under this chapter, and certified copies of the
109 records shall be admissible in evidence in any such
110 proceedings.

111 8. The employer may be required by the division or the
112 commission to furnish an injured employee with artificial
113 legs, arms, hands, surgical orthopedic joints, or eyes, or
114 braces, as needed, for life whenever the division or the
115 commission shall find that the injured employee may be
116 partially or wholly relieved of the effects of a permanent
117 injury by the use thereof. The director of the division
118 shall establish a procedure whereby a claim for compensation
119 may be reactivated after settlement of such claim is
120 completed. The claim shall be reactivated only after the
121 claimant can show good cause for the reactivation of this
122 claim and the claim shall be made only for the payment of
123 medical procedures involving life-threatening surgical
124 procedures or if the claimant requires the use of a new, or
125 the modification, alteration or exchange of an existing,
126 prosthetic device. For the purpose of this subsection,
127 "life threatening" shall mean a situation or condition
128 which, if not treated immediately, will likely result in the
129 death of the injured worker.

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

134 10. The employer shall have the right to select the
135 licensed treating physician, surgeon, chiropractic
136 physician, or other health care provider; provided, however,
137 that such physicians, surgeons or other health care
138 providers shall offer only those services authorized within
139 the scope of their licenses. For the purpose of this
140 subsection, subsection 2 of section 287.030 shall not apply.

141 11. Any physician or other health care provider who
142 orders, directs or refers a patient for treatment, testing,

143 therapy or rehabilitation at any institution or facility
144 shall, at or prior to the time of the referral, disclose in
145 writing if such health care provider, any of his partners or
146 his employer has a financial interest in the institution or
147 facility to which the patient is being referred, to the
148 following:

149 (1) The patient;

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

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

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

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

159 13. (1) No hospital, physician or other health care
160 provider, other than a hospital, physician or health care
161 provider selected by the employee at his own expense
162 pursuant to subsection 1 of this section, shall bill or
163 attempt to collect any fee or any portion of a fee for
164 services rendered to an employee due to a work-related
165 injury or report to any credit reporting agency any failure
166 of the employee to make such payment, when an injury covered
167 by this chapter has occurred and such hospital, physician or
168 health care provider has received actual notice given in
169 writing by the employee, the employer or the employer's
170 insurer. Actual notice shall be deemed received by the
171 hospital, physician or health care provider five days after
172 mailing by certified mail by the employer or insurer to the
173 hospital, physician or health care provider.

174 (2) The notice shall include:

175 (a) The name of the employer;
176 (b) The name of the insurer, if known;
177 (c) The name of the employee receiving the services;
178 (d) The general nature of the injury, if known; and
179 (e) Where a claim has been filed, the claim number, if
180 known.

181 (3) When an injury is found to be noncompensable under
182 this chapter, the hospital, physician or other health care
183 provider shall be entitled to pursue the employee for any
184 unpaid portion of the fee or other charges for authorized
185 services provided to the employee. Any applicable statute
186 of limitations for an action for such fees or other charges
187 shall be tolled from the time notice is given to the
188 division by a hospital, physician or other health care
189 provider pursuant to subdivision (6) of this subsection,
190 until a determination of noncompensability in regard to the
191 injury which is the basis of such services is made, or in
192 the event there is an appeal to the labor and industrial
193 relations commission, until a decision is rendered by that
194 commission.

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

203 (5) If an employer or insurer fails to make payment
204 for authorized services provided to the employee by a
205 hospital, physician or other health care provider pursuant
206 to this chapter, the hospital, physician or other health

207 care provider may proceed pursuant to subsection 4 of this
208 section with a dispute against the employer or insurer for
209 any fees or other charges for services provided.

210 (6) A hospital, physician or other health care
211 provider whose services have been authorized in advance by
212 the employer or insurer may give notice to the division of
213 any claim for fees or other charges for services provided
214 for a work-related injury that is covered by this chapter,
215 with copies of the notice to the employee, employer and the
216 employer's insurer. Where such notice has been filed, the
217 administrative law judge may order direct payment from the
218 proceeds of any settlement or award to the hospital,
219 physician or other health care provider for such fees as are
220 determined by the division. The notice shall be on a form
221 prescribed by the division.

222 14. The employer may allow or require an employee to
223 use any of the employee's accumulated paid leave, personal
224 leave, or medical or sick leave to attend to medical
225 treatment, physical rehabilitation, or medical evaluations
226 during work time. The intent of this subsection is to
227 specifically supercede and abrogate any case law that
228 contradicts the express language of this section.

287.210. 1. After an employee has received an injury
2 he shall from time to time thereafter during disability
3 submit to reasonable medical examination at the request of
4 the employer, the employer's insurer, the commission, the
5 division, an administrative law judge, or the attorney
6 general on behalf of the second injury fund if the employer
7 has not obtained a medical examination report, the time and
8 place of which shall be fixed with due regard to the
9 convenience of the employee and his physical condition and
10 ability to attend. The employee may have his own physician

11 present, and if the employee refuses to submit to the
12 examination, or in any way obstructs it, his right to
13 compensation shall be forfeited during such period unless in
14 the opinion of the commission the circumstances justify the
15 refusal or obstruction.

16 2. The commission, the division or administrative law
17 judge shall, when deemed necessary, appoint a duly qualified
18 impartial physician to examine the injured employee, and any
19 physician so chosen, if he accepts the appointment, shall
20 promptly make the examination requested and make a complete
21 medical report to the commission or the division in such
22 duplication as to provide all parties with copies thereof.
23 The physician's fee shall be [fair and reasonable, as
24 provided in] **subject to** subsection 3 of section 287.140, and
25 the fee and other reasonable costs of the impartial
26 examination may be paid as other costs under this chapter.
27 If all the parties shall have had reasonable access thereto,
28 the report of the physician shall be admissible in evidence.

29 3. The testimony of any physician who treated or
30 examined the injured employee shall be admissible in
31 evidence in any proceedings for compensation under this
32 chapter, but only if the medical report of the physician has
33 been made available to all parties as in this section
34 provided. Immediately upon receipt of notice from the
35 division or the commission setting a date for hearing of a
36 case in which the nature and extent of an employee's
37 disability is to be determined, the parties or their
38 attorneys shall arrange, without charge or costs, each to
39 the other, for an exchange of all medical reports, including
40 those made both by treating and examining physician or
41 physicians, to the end that the parties may be commonly
42 informed of all medical findings and opinions. The exchange

43 of medical reports shall be made at least seven days before
44 the date set for the hearing and failure of any party to
45 comply may be grounds for asking for and receiving a
46 continuance, upon proper showing by the party to whom the
47 medical reports were not furnished. If any party fails or
48 refuses to furnish the opposing party with the medical
49 report of the treating or examining physician at least seven
50 days before such physician's deposition or personal
51 testimony at the hearing, as in this section provided, upon
52 the objection of the party who was not provided with the
53 medical report, the physician shall not be permitted to
54 testify at that hearing or by medical deposition.

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

58 5. As used in this chapter the terms "physician's
59 report" and "medical report" mean the report of any
60 physician made on any printed form authorized by the
61 division or the commission or any complete medical report.
62 As used in this chapter the term "complete medical report"
63 means the report of a physician giving the physician's
64 qualifications and the patient's history, complaints,
65 details of the findings of any and all laboratory, X-ray and
66 all other technical examinations, diagnosis, prognosis,
67 nature of disability, if any, and an estimate of the
68 percentage of permanent partial disability, if any. An
69 element or elements of a complete medical report may be met
70 by the physician's records.

71 6. Upon the request of a party, the physician or
72 physicians who treated or are treating the injured employee
73 shall be required to furnish to the parties a rating and
74 complete medical report on the injured employee, at the

75 expense of the party selecting the physician, along with a
76 complete copy of the physician's clinical record including
77 copies of any records and reports received from other health
78 care providers.

79 7. The testimony of a treating or examining physician
80 may be submitted in evidence on the issues in controversy by
81 a complete medical report and shall be admissible without
82 other foundational evidence subject to compliance with the
83 following procedures. The party intending to submit a
84 complete medical report in evidence shall give notice at
85 least sixty days prior to the hearing to all parties and
86 shall provide reasonable opportunity to all parties to
87 obtain cross-examination testimony of the physician by
88 deposition. The notice shall include a copy of the report
89 and all the clinical and treatment records of the physician
90 including copies of all records and reports received by the
91 physician from other health care providers. The party
92 offering the report must make the physician available for
93 cross-examination testimony by deposition not later than
94 seven days before the matter is set for hearing, and each
95 cross-examiner shall compensate the physician for the
96 portion of testimony obtained in an amount not to exceed a
97 rate of reasonable compensation taking into consideration
98 the specialty practiced by the physician. Cross-examination
99 testimony shall not bind the cross-examining party. Any
100 testimony obtained by the offering party shall be at that
101 party's expense on a proportional basis, including the
102 deposition fee of the physician. Upon request of any party,
103 the party offering a complete medical report in evidence
104 must also make available copies of X rays or other
105 diagnostic studies obtained by or relied upon by the
106 physician. Within ten days after receipt of such notice a

107 party shall dispute whether a report meets the requirements
108 of a complete medical report by providing written objections
109 to the offering party stating the grounds for the dispute,
110 and at the request of any party, the administrative law
111 judge shall rule upon such objections upon pretrial hearing
112 whether the report meets the requirements of a complete
113 medical report and upon the admissibility of the report or
114 portions thereof. If no objections are filed the report is
115 admissible, and any objections thereto are deemed waived.
116 Nothing herein shall prevent the parties from agreeing to
117 admit medical reports or records by consent.

118 8. Certified copies of the proceedings before any
119 coroner holding an inquest over the body of any employee
120 receiving an injury in the course of his employment
121 resulting in death shall be admissible in evidence in any
122 proceedings for compensation under this chapter, and it
123 shall be the duty of the coroner to give notice of the
124 inquest to the employer and the dependents of the deceased
125 employee, who shall have the right to cross-examine the
126 witness.

127 9. The division or the commission may in its
128 discretion in extraordinary cases order a postmortem
129 examination and for that purpose may also order a body
130 exhumed.

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