

SECOND REGULAR SESSION

# SENATE BILL NO. 1052

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

5741S.011

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2 repealed and two new sections enacted in lieu thereof, to be  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.**

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

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

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

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

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

80           (1) Two years from the date the first notice of  
81 dispute of the medical charge was received by the health  
82 care provider if such services were rendered before July 1,  
83 2013; and

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,

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

(1) The patient;

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

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

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

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

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

(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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