

2017 Regular Session

SENATE BILL NO. 121

BY SENATOR WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL PROCEDURE. Provides relative to terminology of court-ordered and other mandatory examinations in civil and administrative matters and claims. (gov sig)

1 AN ACT  
2 To amend and reenact Code of Civil Procedure Articles 1421 and 1464, R.S. 23:1123, 1124,  
3 1203(E), 1221(4)(s)(ii), 1307 and 1317.1, R.S. 39:1952(14)(e), and R.S.  
4 46:2136(A)(4), relative to court-ordered and other mandatory physical and mental  
5 examinations; to provide relative to such examinations in certain civil and  
6 administrative matters, procedures, and claims; to provide for consistency in  
7 terminology and nomenclature, and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 1421 and 1464 are hereby amended and  
10 reenacted to read as follows:

11 Art. 1421. Discovery methods  
12 Parties may obtain discovery by one or more of the following methods:  
13 depositions upon oral examination or written questions; written interrogatories;  
14 production of documents or things or permission to enter upon land or other  
15 property, for inspection and other purposes; physical and mental examinations,  
16 **including compulsory examinations under Article 1464**; request for release of  
17 medical records; and requests for admission. Unless the court orders otherwise under

1 Article 1426, the frequency of use of these methods is not limited.

2 \* \* \*

3 Art. 1464. Order for **compulsory** physical or mental examination of persons

4 When the mental or physical condition of a party, or of a person in the  
5 custody or under the legal control of a party, is in controversy, the court in which the  
6 action is pending may order the party to submit to a **compulsory** physical or mental  
7 examination by a physician or to produce for examination the person in his custody  
8 or legal control, except as provided by law. In addition, the court may order the party  
9 to submit to ~~an~~ **a compulsory** examination by a vocational rehabilitation expert or  
10 a licensed clinical psychologist who is not a physician, provided the party has given  
11 notice of intention to use such an expert. The order may be made only on motion for  
12 good cause shown and upon notice to the person to be examined and to all parties  
13 and shall specify the time, place, manner, conditions, and scope of the examination  
14 and the person or persons by whom it is to be made.

15 Section 2. R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1 are hereby  
16 amended and reenacted to read as follows:

17 §1123. Disputes as to condition or capacity to work; **compulsory** examination  
18 under supervision of the director

19 If any dispute arises as to the condition of the employee, or the employee's  
20 capacity to work, the director, upon application of any party, shall order ~~an~~ **a**  
21 **compulsory** examination of the employee to be made by a medical practitioner  
22 selected and appointed by the director. The medical examiner shall report his  
23 conclusions from the examination to the director and to the parties and such report  
24 shall be prima facie evidence of the facts therein stated in any subsequent  
25 proceedings under this Chapter.

26 §1124. Refusal to submit to **compulsory** examination; effect on right to  
27 compensation

28 If the employee refuses to submit himself to a **compulsory** medical  
29 examination at the behest of the employer or an examination conducted pursuant to

1 R.S. 23:1123, or in anywise obstructs the same, his right to compensation and to take  
 2 or prosecute any further proceedings under this Chapter may be suspended by the  
 3 employer or payor until the examination takes place. Such suspension of benefits by  
 4 the employer or payor shall be made in accordance with the provisions of R.S.  
 5 23:1201.1(A)(4) and (5). When the employee has filed a disputed claim, the  
 6 employer or payor may move for an order to compel the employee to appear for ~~an~~  
 7 **a compulsory** examination. The employee shall receive at least fourteen days written  
 8 notice prior to the **compulsory** examination. When a right to compensation is  
 9 suspended no compensation shall be payable in respect to the period of suspension.

10 \* \* \*

11 §1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic  
 12 devices; other expenses

13 \* \* \*

14 E. Upon the first request for authorization pursuant to R.S. 23:1142(B)(1),  
 15 for a claimant's medical care, service, or treatment, the payor, as defined in R.S.  
 16 23:1142(A)(1), shall communicate to the claimant information, in plain language,  
 17 regarding the procedure for requesting ~~an independent~~ **a compulsory** medical  
 18 examination in the event a dispute arises as to the condition of the employee or the  
 19 employee's capacity to work, and the procedure for appealing the denial of medical  
 20 treatment to the medical director as provided in R.S. 23:1203.1. A payor shall not  
 21 deny medical care, service, or treatment to a claimant unless the payor can document  
 22 a reasonable and diligent effort in communicating such information. A payor who  
 23 denies medical care, service, or treatment without making such an effort may be  
 24 fined an amount not to exceed five hundred dollars or the cost of the medical care,  
 25 service, or treatment, whichever is more.

26 \* \* \*

27 §1221. Temporary total disability; permanent total disability; supplemental earnings  
 28 benefits; permanent partial disability; schedule of payments

29 Compensation shall be paid under this Chapter in accordance with the

1 following schedule of payments:

2 \* \* \*

3 (4) Permanent partial disability. In the following cases, compensation shall  
4 be solely for anatomical loss of use or amputation and shall be as follows:

5 \* \* \*

6 (s)(i) \* \* \*

7 (ii) In any claim for an injury, it must be established by clear and convincing  
8 evidence that the employee suffers an injury and that such resulted from an accident  
9 arising out of and in the course and scope of his employment. Nothing herein shall  
10 limit the right of any party to obtain a second medical opinion or, in appropriate  
11 cases, the opinion of ~~an independent~~ **a compulsory** medical examiner pursuant to  
12 R.S. 23:1123.

13 \* \* \*

14 §1307. Information to injured employee

15 Upon receipt of notice of injury from the employer or other indication of an  
16 injury reportable under R.S. 23:1306, the office shall mail immediately to the injured  
17 employee and employer a brochure which sets forth in clear understandable language  
18 a summary statement of the rights, benefits, and obligations of employers and  
19 employees under this Chapter, together with an explanation of the operations of the  
20 office, and shall invite the employer and employee to seek the advice of the office  
21 with reference to any question or dispute which the employee has concerning the  
22 injury. Such brochure shall specifically state the procedure for requesting ~~an~~  
23 ~~independent~~ **a compulsory** medical examination in the event a dispute arises as to  
24 the condition of the employee or the employee's capacity to work and the procedure  
25 for appealing the denial of medical treatment to the medical director as provided in  
26 R.S. 23:1203.1. If such brochure has previously been mailed to an employer within  
27 the calendar year, the office shall not mail such employer an additional brochure  
28 unless the employer specifically requests such.

29 \* \* \*

1 §1317.1. ~~Independent~~ **Compulsory** medical examinations

2 A. Any party wishing to request ~~an independent~~ **a compulsory** medical  
3 examination of the claimant pursuant to R.S. 23:1123 and 1124.1 shall be required  
4 to make its request at or prior to the pretrial conference. Requests for ~~independent~~  
5 **compulsory** medical examinations made after that time shall be denied except for  
6 good cause or if it is found to be in the best interest of justice to order such  
7 examination.

8 B. An examiner performing ~~independent~~ **compulsory** exams pursuant to R.S.  
9 23:1123 shall be required to prepare and send to the office a certified report of the  
10 examination within thirty days after its occurrence.

11 C. The report of the examination shall contain the following, when  
12 applicable:

13 (1) A statement of the medical and legal issues the examiner was asked to  
14 address.

15 (2) A detailed summary of the basis of the examiner's opinion, including but  
16 not limited to a listing of reports or documents reviewed in formulating that opinion.

17 (3) The medical treatment and physical rehabilitative procedures which have  
18 already been rendered and the treatment, if any, which the examiner recommends for  
19 the future, together with reasons for the recommendation.

20 (4) Any other conclusions required by the scope of the ~~independent~~  
21 **compulsory** medical examination, together with reasons for the conclusion reached.

22 (5) A curriculum vitae of the examiner.

23 (6) A written certification personally signed by the examiner that the report  
24 is true. The substance of the certification shall be: "I certify that I have caused this  
25 report to be prepared, I have examined it, and to the best of my knowledge and  
26 belief, all statements contained herein are true, accurate, and complete."

27 D. If a physical examination of the claimant was conducted, the certified  
28 report shall contain all of the following additional information:

29 (1) A complete history of the claimant, including all previous relevant or

1 contributory injuries with a detailed description of the present injury.

2 (2) The complaints of the claimant.

3 (3) A complete listing of tests and diagnostic procedures conducted during  
4 the course of the examination.

5 (4) The examiner's findings on examination, including but not limited to a  
6 description of the examination and any diagnostic tests and X-rays.

7 E. When the ~~independent~~ **compulsory** medical examiner's report is presented  
8 within thirty days as provided in this Section:

9 (1) The examiner shall be protected from subpoena except for a single trial  
10 deposition. However, upon a proper motion for cause, the workers' compensation  
11 judge may order further discovery of the ~~independent~~ **compulsory** medical examiner  
12 as deemed appropriate.

13 (2) Except to schedule the deposition or further discovery as described above,  
14 the office of the ~~independent~~ **compulsory** medical examiner shall not be contacted  
15 regarding the claimant by any party, attorney, or agent.

16 F. Objections to the ~~independent~~ **compulsory** medical examination shall be  
17 made on form LDOL-WC-1008, and shall be set for hearing before a workers'  
18 compensation judge within thirty days of receipt. No mediation shall be scheduled  
19 on disputes arising under this Section.

20 Section 3. R.S. 39:1952(14)(e) is hereby amended and reenacted to read as follows:

21 §1952. Definitions

22 Unless the context requires otherwise, the following words shall have the  
23 following meanings:

24 \* \* \*

25 (14) "Minority" means a person who is a citizen or permanent resident of the  
26 United States residing in Louisiana and who is any of the following:

27 \* \* \*

28 (e) Person with a disability: a person who has a permanent physical  
29 impairment which includes any physiological disorder or condition, cosmetic

1 disfigurement, or anatomical loss affecting one or more of the following body  
 2 systems: neurological, musculoskeletal, speech organs, skin, and endocrine, which  
 3 substantially limits at least one major life activity of an individual, as defined in R.S.  
 4 28:477(3)(a), as verified by two physicians or as certified by the United States  
 5 Department of Veterans Affairs as meeting the qualifications and approved by the  
 6 division. The division may require an additional ~~independent~~ **compulsory** medical  
 7 examination by a physician chosen by the division, at the applicant's expense, prior  
 8 to approval of an application. For the purpose of this Subparagraph, "disability" shall  
 9 not mean mental impairment, temporary impairment, alcohol or drug addiction,  
 10 sexual or behavioral disorders, or substantially limiting illnesses including human  
 11 immunodeficiency virus.

12 \* \* \*

13 Section 4. R.S. 46:2136(A)(4) is hereby amended and reenacted to read as follows:  
 14 §2136. Protective orders; content; modification; service

15 A. The court may grant any protective order or approve any consent  
 16 agreement to bring about a cessation of domestic abuse as defined in R.S.  
 17 46:2132(3), or the threat or danger thereof, to a party, any minor children, or any  
 18 person alleged to be incompetent, which relief may include but is not limited to:

19 \* \* \*

20 (4)(a) Ordering a **compulsory** medical evaluation of the defendant or the  
 21 abused person, or both, to be conducted by an independent court-appointed evaluator  
 22 who qualifies as an expert in the field of domestic abuse. The evaluation shall be  
 23 conducted by a person who has no family, financial, or prior medical relationship  
 24 with the defendant or abused person, or their attorneys of record.

25 (b) If the **compulsory** medical evaluation is ordered for both the defendant  
 26 and abused person, two separate evaluators shall be appointed.

27 (c) After ~~an independent~~ **a compulsory** medical evaluation has been  
 28 completed and a report issued, the court may order counseling or other medical  
 29 treatment as deemed appropriate.

\* \* \*

1  
2 Section 5. This Act shall become effective upon signature by the governor or, if not  
3 signed by the governor, upon expiration of the time for bills to become law without signature  
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
6 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Jerry G. Jones.

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DIGEST

SB 121 Original                      2017 Regular Session                      Ward

Present law provides that in civil proceedings the parties may obtain discovery by various methods, including physical and mental examinations.

Present law further provides that when the mental or physical condition of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control, except as provided by law. In addition, the court may order the party to submit to an examination by a vocational rehabilitation expert or a licensed clinical psychologist who is not a physician, provided the party has given notice of intention to use such an expert.

Present law further provides that such court orders for mandatory examinations may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Proposed law retains present law and adds reference to such examinations as compulsory physical and mental examinations.

Present law relative to employer and employee administrative procedures and claims provides that if a dispute arises as to the condition of an employee, or the employee's capacity to work, the employee may be ordered to undergo an examination to be made by a medical practitioner selected and appointed by the director. The medical examiner shall report his conclusions from the examination to the director and to the parties and such report shall be prima facie evidence of the facts therein stated.

Present law further provides procedures for such examination and resulting report, including communications to the employee regarding such examination, and requesting by any party of such examination in a dispute prior to pretrial conference. Further provides for potential sanctions for an employee who refuses to submit himself to such examination, including suspension by the employer or payor of the employee's right to compensation or action until the examination takes place.

Present law refers to such examinations as independent medical examinations and the examiner as an independent medical examiner. Proposed law changes references to compulsory medical examinations and compulsory medical examiners.

Present law relative to Minority and Women's Business Enterprise Act provides that for the purpose of determining whether a person is disabled the state may require an additional

medical examination by a physician chosen by the state, at the applicant's expense, prior to approval of an application. Proposed law changes reference from independent medical examination to compulsory medical examination.

Present law relative to the Protection From Family Violence Act provides that in domestic abuse cases the court may grant any protective order or approve any consent agreement to bring about a cessation of domestic abuse, or the threat or danger thereof, to a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to, ordering a medical evaluation of the defendant or the abused person, or both. Proposed law changes reference from medical evaluation to compulsory medical evaluation.

Effective upon signature of governor or lapse of time for gubernatorial actions.

(Amends C.C.P. Arts. 1421 and 1464, R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1, R.S. 39:1952(14)(e), and R.S. 46:2136(A)(4))