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DIGEST

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SB 121 Engrossed

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 additional medical opinions for physical and mental examinations.

Proposed law further provides that a plaintiff shall not be ordered to submit to multiple examinations by multiple physicians within the same field of specialty for the same injury except for good cause shown.

Proposed law provides that a minor shall have the right to have a parent, tutor, or legal guardian present during the examination, and that, if such person cannot be present, the court shall order the examination to be videotaped at the expense of the party being examined.

Proposed law requires that the court consider the best interests of the minor, and provides that the court may impose conditions upon videotaping, including that it be done in a manner least harmful to the minor and without disclosure to the minor.

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 additional medical opinion medical examinations and compulsory medical examiners.

Present law, relative to the 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 "additional medical opinion 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 "additional medical opinion 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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the engrossed bill:

1. Change all references from "compulsory examinations" to "additional medical opinions".
2. Add prohibition from having to submit to multiple examinations by multiple physicians.
3. Add the right of a parent, tutor, or legal guardian of a minor to be present during an examination.
4. Add requirement of videotaping examination if a parent, tutor, or legal guardian of a minor cannot be present, with party being examined paying the expense of videotaping.
5. Add provision that the court consider the best interest of the minor.