

1.1 A bill for an act

1.2 relating to integrity and fairness in medical examinations; regulating certain
1.3 medical examinations; amending Minnesota Statutes 2008, sections 65B.56,
1.4 subdivision 1; 176.136, subdivision 1c; 176.155, subdivision 1, by adding a
1.5 subdivision.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 65B.56, subdivision 1, is amended to read:

1.8 Subdivision 1. **Adverse medical examinations; integrity; and discovery of**
1.9 **condition of claimant.** Any person with respect to whose injury benefits are claimed
1.10 under a plan of reparation security shall, upon request of the reparation obligor from
1.11 whom recovery is sought, submit to ~~a physical~~ an adverse medical examination by a
1.12 physician or physicians selected by the obligor as may reasonably be required. The
1.13 obligation to submit to an examination applies only to requests from a reparation obligor
1.14 that has timely paid all medical bills for which it is responsible related to the injury for
1.15 which the examination is sought.

1.16 The costs of any examinations requested by the obligor shall be borne entirely by
1.17 the requesting obligor. Such examinations shall be conducted within the city, town, or
1.18 statutory city of residence of the injured person. If there is no qualified physician to
1.19 conduct the examination within the city, town, or statutory city of residence of the injured
1.20 person, then such examination shall be conducted at another place of the closest proximity
1.21 to the injured person's residence. Obligors are authorized to include reasonable provisions
1.22 in policies for mental and physical examination of those injured persons.

1.23 If requested by the person examined, a party causing an examination to be made
1.24 shall deliver to the examinee a copy of every written report concerning the examination

S.F. No. 394, as introduced - 86th Legislative Session (2009-2010) [09-0451]

2.1 rendered by an examining physician to that person, at least one of which reports must set
2.2 out in detail the findings and conclusions of such examining physician.

2.3 An injured person shall also do all things reasonably necessary to enable the obligor
2.4 to obtain medical reports and other needed information to assist in determining the
2.5 nature and extent of the injured person's injuries and loss, and the medical treatment
2.6 received. If the claimant refuses to cooperate in responding to requests for examination
2.7 and information as authorized by this section, evidence of such noncooperation shall be
2.8 admissible in any suit or arbitration filed for damages for such personal injuries or for the
2.9 benefits provided by sections 65B.41 to 65B.71.

2.10 A physician may not perform more than a total of 24 adverse examinations under
2.11 this subdivision and section 176.155, subdivision 1, in any calendar year whether done for
2.12 one or more reparation obligors or employers.

2.13 A physician may perform a chart or other paper review, but benefits or claims may
2.14 not be denied on evidence based on such an examination. Testimony or other evidence
2.15 by a physician on behalf of the reparation obligor concerning the medical condition of
2.16 the injured person may be considered as a basis for denying a claim or benefit if the
2.17 physician has physically examined the person.

2.18 A physician performing an adverse examination under this section must be licensed
2.19 to practice medicine in Minnesota.

2.20 The provisions of this section apply before and after the commencement of suit.

2.21 Sec. 2. Minnesota Statutes 2008, section 176.136, subdivision 1c, is amended to read:

2.22 Subd. 1c. **Charges for ~~independent~~ adverse medical examinations.** The
2.23 commissioner shall adopt rules that reasonably limit amounts which may be charged for,
2.24 or in connection with, ~~independent or~~ adverse medical examinations requested by any
2.25 party, including the amount that may be charged for depositions, witness fees, or other
2.26 expenses. No party may pay fees above the amount in the schedule.

2.27 Sec. 3. Minnesota Statutes 2008, section 176.155, subdivision 1, is amended to read:

2.28 Subdivision 1. **Employer's physician.** The injured employee must submit to an
2.29 adverse examination by the employer's physician, if requested by the employer, and at
2.30 reasonable times thereafter upon the employer's request. The obligation to submit to an
2.31 examination applies only to requests from an employer that has timely paid all claims for
2.32 medical benefits related to the injury for which it is responsible. The adverse examination
2.33 must be scheduled at a location within 150 miles of the employee's residence unless
2.34 the employer can show cause to the department to order an examination at a location

S.F. No. 394, as introduced - 86th Legislative Session (2009-2010) [09-0451]

3.1 further from the employee's residence. The employee is entitled upon request to have a
3.2 personal physician present at any such examination. Each party shall defray the cost of
3.3 that party's physician. Any report or written statement made by the employer's physician
3.4 as a result of an examination of the employee, regardless of whether the examination
3.5 preceded the injury or was made subsequent to the injury, shall be made available, upon
3.6 request and without charge, to the injured employee or representative of the employee.
3.7 The employer shall pay reasonable travel expenses incurred by the employee in attending
3.8 the examination including mileage, parking, and, if necessary, lodging and meals. The
3.9 employer shall also pay the employee for any lost wages resulting from attendance at the
3.10 examination. A self-insured employer or insurer who is served with a claim petition
3.11 pursuant to section 176.271, subdivision 1, or 176.291, shall schedule any necessary
3.12 examinations of the employee, if an examination by the employer's physician or health
3.13 care provider is necessary to evaluate benefits claimed. The examination shall be
3.14 completed and the report of the examination shall be served on the employee and filed
3.15 with the commissioner within 120 days of service of the claim petition.

3.16 No evidence relating to the examination or report shall be received or considered
3.17 by the commissioner, a compensation judge, or the court of appeals in determining any
3.18 issues unless the report has been served and filed as required by this section, unless a
3.19 written extension has been granted by the commissioner or compensation judge. The
3.20 commissioner or a compensation judge shall extend the time for completing the adverse
3.21 examination and filing the report upon good cause shown. The extension must not be for
3.22 the purpose of delay and the insurer must make a good faith effort to comply with this
3.23 subdivision. Good cause shall include but is not limited to:

3.24 (1) that the extension is necessary because of the limited number of physicians or
3.25 health care providers available with expertise in the particular injury or disease, or that the
3.26 extension is necessary due to the complexity of the medical issues, or

3.27 (2) that the extension is necessary to gather additional information which was not
3.28 included on the petition as required by section 176.291.

3.29 Sec. 4. Minnesota Statutes 2008, section 176.155, is amended by adding a subdivision
3.30 to read:

3.31 Subd. 1a. **Restrictions on adverse examinations.** A physician may not perform
3.32 more than a total of 24 adverse examinations under subdivision 1 or section 65B.56,
3.33 subdivision 1, in any calendar year whether done for one or more employers or reparation
3.34 obligors.

S.F. No. 394, as introduced - 86th Legislative Session (2009-2010) [09-0451]

4.1 A physician may perform a chart or other paper review but benefits or claims may
4.2 not be denied on evidence based on such examination. Testimony or other evidence by
4.3 a physician on behalf of the employer concerning the medical condition of the injured
4.4 person may be considered as a basis for denying a claim or benefit if the physician has
4.5 physically examined the person.

4.6 A physician performing adverse examinations under this section and section 65B.56
4.7 must be licensed to practice medicine in Minnesota.