

# 1996 SESSION

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SB405ER

1 *An Act to amend and reenact § 16.1-88.2 of the Code of Virginia, relating to evidence of medical*  
2 *records.*

[S 405]

Approved

5 **Be it enacted by the General Assembly of Virginia:**

6 **1. That § 16.1-88.2 of the Code of Virginia is amended and reenacted as follows:**

7 § 16.1-88.2. Evidence of medical reports or records; testimony of health care provider or custodian of  
8 records.

9 In a civil suit tried in a general district court to recover damages for personal injuries or to resolve  
10 any dispute with an insurance company *or health care provider*, either party may present evidence as to  
11 the extent, nature and treatment of the injury, the examination of the person so injured and the costs of  
12 such treatment and examination by a report from the treating or examining health care provider as  
13 defined in § 8.01-581.1 and the records of a hospital or similar medical facility at which the treatment or  
14 examination was performed. Such medical report shall be admitted if the party intending to present  
15 evidence by the use of a report gives the opposing party or parties a copy of the report and written  
16 notice of such intention ten days in advance of trial and if attached to such report is a sworn statement  
17 of the treating or examining health care provider that: (i) the person named therein was treated or  
18 examined by such health care provider; (ii) the information contained in the report is true and accurate  
19 and fully descriptive as to the nature and extent of the injury; and (iii) that any statement of costs  
20 contained in the report is true and accurate. Such hospital or other medical facility record shall be  
21 admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and  
22 accurate copy of the record of such hospital or other medical facility. If, thereafter, the plaintiff or  
23 defendant summons the health care provider or custodian making such statement to testify in proper  
24 person or by deposition taken de bene esse, the court shall determine which party shall pay the fee and  
25 costs for such appearance or depositions, or may apportion the same among the parties in such  
26 proportions as the ends of justice may require. If such health care provider or custodian is not subject to  
27 subpoena for cross-examination in court or by a deposition de bene esse, then the court shall allow a  
28 reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to  
29 obtain his testimony as the ends of justice may require.