

2018 Regular Session

SENATE BILL NO. 180

BY SENATOR MILKOVICH

LIABILITY. Provides for tort liability for a worker's compensation insurer that causes further injury through the unreasonable denial of medical treatment to an injured worker. (8/1/18)

1 AN ACT

2 To amend and reenact R.S. 23:1203(E), relative to workers' compensation; to provide for  
3 workers' compensation benefits; to provide for medical treatment for certain injured  
4 employees; to provide for liability; to provide for exclusions for liability; to provide  
5 for damages; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1203(E) is hereby amended and reenacted to read as follows:

8 §1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic  
9 devices; other expenses

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11 E.(1) Upon the first request for authorization pursuant to R.S. 23:1142(B)(1),  
12 for a claimant's medical care, service, or treatment, the payor, as defined in R.S.  
13 23:1142(A), shall communicate to the claimant information, in plain language,  
14 regarding the procedure for requesting an additional medical opinion regarding a  
15 medical examination in the event a dispute arises as to the condition of the employee  
16 or the employee's capacity to work, and the procedure for appealing the denial of  
17 medical treatment to the medical director as provided in R.S. 23:1203.1. A payor

1 shall not deny medical care, service, or treatment to a claimant unless the payor can  
 2 document a reasonable and diligent effort in communicating such information. A  
 3 payor who denies medical care, service, or treatment without making such an effort  
 4 may be fined an amount not to exceed five hundred dollars or the cost of the medical  
 5 care, service, or treatment, whichever is more.

6 **(2) In addition to the remedies provided in Paragraph (1) of this**  
 7 **Subsection and notwithstanding anything to the contrary, a payor who denies**  
 8 **medical care, service, or treatment to a claimant, without good cause, shall be**  
 9 **liable, in tort, for damages to the claimant when such unreasonable denial of**  
 10 **medical care, service, or treatment causes the claimant an additional injury or**  
 11 **the aggravation of an existing injury. For purposes of this Subparagraph, the**  
 12 **term "payor", as it relates to a tort claim, shall not include an employer who**  
 13 **has a valid workers' compensation insurance policy with a workers'**  
 14 **compensation insurer but shall only include the insurer for the employer who**  
 15 **made the decision to unreasonably deny medical treatment.**

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Carla S. Roberts.

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DIGEST

SB 180 Original                      2018 Regular Session                      Milkovich

Present law provides that, when a dispute arises as to the first request for authorization for a claimant's medical care, service, or treatment, the payor (i.e., the employer or the employer's workers' compensation insurer) will communicate to the claimant information, in plain language, regarding the procedure for requesting an additional medical opinion regarding a medical examination as to the condition of the employee or the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director. Present law provides that a payor shall not deny medical care, service, or treatment to a claimant unless the payor can document a reasonable and diligent effort in communicating such information. Present law provides that a payor who denies medical care, service, or treatment without making such an effort may be fined an amount not to exceed \$500 or the cost of the medical care, service, or treatment, whichever is more.

Proposed law retains present law but provides that, in addition to the remedies provided in present law, a payor who denies medical care, service, or treatment to a claimant without good cause shall be liable, in tort, for damages to the claimant when such unreasonable denial of medical care, service, or treatment causes the claimant an additional injury or the aggravation of an existing injury.

Proposed law provides that for purposes of proposed law, the term "payor", as it relates to a tort claim, shall not include an employer who has a valid workers' compensation insurance

policy with a workers' compensation insurer. Proposed law provides that the workers' compensation insurance company, who actually made the decision to unreasonably deny medical treatment, shall be liable in tort but the employer, who did not make the decision, shall not be liable.

Effective August 1, 2018.

(Amends R.S. 23:1203(E))