

2024 Regular Session

HOUSE BILL NO. 703

BY REPRESENTATIVES MELERINE, MIKE JOHNSON, HORTON, BEAULLIEU,
AND MCFARLAND

WORKERS COMPENSATION: Provides relative to controversion of benefits, preliminary
determination hearings, disputed claims, and penalties and attorney fees

1 AN ACT

2 To amend and reenact R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and
3 1314(E)(1), relative to workers' compensation; to provide for penalties and attorney
4 fees under certain circumstances; to provide for payment of workers' compensation
5 claims; to provide for the controversion of compensation and medical benefits; to
6 provide for disputed claims; to require certain notice and delivery requirements; to
7 provide exceptions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1)
10 are hereby amended and reenacted to read as follows:

11 §1201. Time and place of payment; failure to pay timely; failure to authorize;
12 penalties and attorney fees

13 * * *

14 F.(1) Except as otherwise provided in this Chapter, failure to provide
15 payment in accordance with this Section or failure to consent to the employee's
16 request to select a treating physician or change physicians when such consent is
17 required by R.S. 23:1121 shall result in the assessment of a penalty in an amount ~~up~~
18 ~~to the greater~~ of twelve percent of any unpaid compensation or medical benefits, ~~or~~
19 ~~fifty dollars per calendar day for each day in which any and all compensation or~~

1 ~~medical benefits remain unpaid or such consent is withheld, together with reasonable~~
2 ~~attorney fees for each disputed claim; however, the fifty dollars per calendar day~~
3 provided that such penalty shall not exceed a maximum of two thousand dollars in
4 the aggregate for any claim. The maximum amount of penalties which may be
5 imposed at a hearing on the merits regardless of the number of penalties which might
6 be imposed under this Section is eight thousand dollars. The maximum amount of
7 attorney fees which may be imposed at a hearing on the merits regardless of the
8 number of penalties which might be imposed pursuant to this Section is eight
9 thousand dollars, excluding any additional fees which may be paid pursuant to R.S.
10 23:1141. An award of penalties and attorney fees at any hearing on the merits shall
11 be res judicata as to any and all claims for which penalties may be imposed under
12 this Section which precedes the date of the hearing. Penalties shall be assessed in the
13 following manner:

14 ~~(+)~~(a) Such penalty and attorney fees shall be assessed against either the
15 employer or the insurer, depending upon fault. No workers' compensation insurance
16 policy shall provide that these sums shall be paid by the insurer if the workers'
17 compensation judge determines that the penalty and attorney fees are to be paid by
18 the employer rather than the insurer.

19 (b) Except as provided in Subparagraph (c) of this Subsection, any additional
20 compensation paid by the employer or insurer pursuant to this Section shall be paid
21 directly to the employee.

22 (c) In the event that the healthcare provider prevails on a claim for payment
23 of his fee, penalties as provided in this Section and reasonable attorney fees based
24 upon actual hours worked may be awarded and paid directly to the healthcare
25 provider. This Subsection shall not be construed to provide for recovery of more
26 than one penalty or attorney fee.

27 (d) No amount paid as a penalty or attorney fee in accordance with this
28 Subsection shall be included in any formula utilized to establish premium rates for
29 workers' compensation insurance.

1 (2) Send the notice of the initial indemnity payment to the injured employee
 2 ~~on the same day as the first payment of compensation is made by the payor~~ any time
 3 within ten business days of the first payment of indemnity benefits by either regular
 4 or certified mail, email, facsimile, hand-delivery, or any other reasonable
 5 commercial carrier express delivery after the payor has received notice of the claim
 6 from the employer.

7 (3) Send a copy of the notice of the initial payment of indemnity to the office
 8 ~~any time~~ within ten business days of the first payment of indemnity benefits by either
 9 regular or certified mail, email, facsimile, hand-delivery, or any other reasonable
 10 commercial carrier express delivery from the date the original notice was sent to the
 11 injured employee or ~~by facsimile~~ to the injured employee's representative.

12 (4) Send the "Notice of Payment, Modification, Suspension, Termination,
 13 or Controversion of Compensation ~~and/or~~ or Medical Benefits" to the injured
 14 employee ~~by certified mail~~ any time within ten business days to the employee by
 15 either regular or certified mail, email, facsimile, hand-delivery, or any other
 16 reasonable commercial carrier express delivery, to the address at which the employee
 17 is receiving payments of compensation, ~~on or before~~ within ten business days of the
 18 effective date of a modification, suspension, termination, or controversion.

19 (5) Send a copy of the "Notice of Payment, Modification, Suspension,
 20 Termination, or Controversion of Compensation ~~and/or~~ or Medical Benefits" to the
 21 office ~~on the same business day as sent to the employee or to his representative~~ any
 22 time within ten business days of the effective date of a modification, suspension,
 23 termination, or controversion by either regular or certified mail, email, facsimile,
 24 hand-delivery, or any other reasonable commercial carrier express delivery.

* * *

26 D. If the injured employee is represented by an attorney, the notice shall also
 27 be provided to the employee's representative ~~by facsimile~~ any time within ten
 28 business days of the effective date of modification, suspension, termination or
 29 controversion by either regular or certified mail, email, facsimile, hand-delivery, or

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~~I.(1) An employer or payor who has not complied with the requirements set forth in Subsection A through E of this Section or has not initially accepted the claim as compensable, subject to further investigation and subsequent controversion shall not be entitled to a preliminary determination. An employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees pursuant to R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of this Section.~~ An employer or payor shall be entitled to a preliminary determination regarding the notice of the initial indemnity payment if the employer or payor has complied with the requirements of Paragraphs (A)(1) through (3) and Subsection D of this Section.

(2) An employer or payor shall be entitled to a preliminary determination regarding any notice of modification, suspension, termination, or controversion if the employer or payor has complied with the requirements of Paragraphs (A)(1), (4), and (5) and Subsection D of this Section, regardless of whether the employer or payor was entitled to a preliminary determination pursuant to Paragraph (1) or (3) of this Subsection.

(3) An employer or payor shall be entitled to a preliminary determination regarding any amicable demand provided pursuant to Paragraph (F)(2) of this Section, regardless of whether the employer or payor was entitled to a preliminary determination pursuant to Paragraph (1) or (2).

(4) An employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees pursuant to R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of this Section.

~~(2)~~(5) Any dispute by the employee or his representative to the request for a preliminary determination hearing by the employer or payor shall be filed by a formal motion with the court within ten business days of the employer's or payor's

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 motion with the court requesting a preliminary determination hearing. Failure to file
 2 a motion disputing the request for a preliminary determination as required by this
 3 Paragraph will bar any objection to the right of the employer or payor to a
 4 preliminary determination hearing. If disputed by the parties, upon a rule to show
 5 cause held prior to the preliminary determination or any hearing held pursuant to this
 6 Section, the workers' compensation judge shall determine whether the employer is
 7 in compliance.

* * *

9 §1314. Necessary allegations; dismissal of premature petition; dispute of benefits

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11 E.(1) Notwithstanding any other provision of this Section, the employer or
 12 payor shall be permitted to file a disputed claim against an employee, his dependent,
 13 or beneficiary ~~only when the employer or payor alleges the employee, his dependent,~~
 14 ~~or beneficiary has committed fraud as provided in R.S. 23:1208 which caused the~~
 15 ~~employer or payor to pay a benefit which was not due to the employee, his~~
 16 ~~dependent, or beneficiary, or when the employer or payor is an aggrieved party~~
 17 ~~appealing a decision of the medical director pursuant to R.S. 23:1203.1(K).~~

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 703 Original

2024 Regular Session

Melerine

Abstract: Provides relative to controversion of benefits, preliminary determination hearings, disputed claims, and penalties and attorney fees.

Present law provides that failure to provide payment or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required shall result in the assessment of a penalty in an amount up to the greater of 12% of any unpaid compensation or medical benefits, or \$50 per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, in addition to attorney fees for each disputed claim. Proposed law further provides that the penalty shall not exceed \$2,000.

Proposed law removes provisions of present law that require payment for any and all compensation or medical benefits that remain unpaid or when consent is withheld, in addition to reasonable attorney fees. Proposed law otherwise retains present law.

Present law allows a maximum penalty amount of \$8,000 to be imposed at a hearing on the merits.

Proposed law retains present law.

Proposed law allows a maximum amount of \$8,000, excluding any additional fees which may be paid pursuant to present law (R.S. 23:1141), of attorney fees to be imposed at a hearing on the merits.

Present law requires any additional compensation paid by the employee or insurer to be paid directly to the employee. Proposed law retains present law.

Present law provides that in the event that the healthcare provider prevails on a claim for payment of his fee, penalties and reasonable attorney fees based upon actual hours worked may be awarded and paid directly to the healthcare provider. Present law further provides that the provisions of present law shall not be construed to provide for recovery of more than one penalty or attorney fee.

Proposed law retains present law.

Present law prohibits a penalty or attorney fee from being included in any formula utilized to establish premium rates for workers' compensation insurance. Proposed law retains present law.

Proposed law provides that if the employee has failed to submit amicable demand for the benefit in dispute to the employer or insurer, in writing with sufficient particularity and proof, or if following receipt of the employee's amicable demand, the employer or insurer pays the disputed benefit within 10 business days.

Present law provides upon the first payment of compensation or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issue of medical causation, compensability of the claim, or issues arising out of provisions of present law, shall do all of the following:

- (1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits.
- (2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment is made after the payor has received notice of the claim from the employer.
- (3) Send a copy of the notice of the initial payment of indemnity to the office from when the original notice was sent to the injured employee or to his representative.
- (4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the injured employee, to the employee's address where he receives payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.
- (5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the office on the same business day as sent to the employee or his representative.

Proposed law changes provisions of present law from requiring the first payment of compensation to the first payment of indemnity benefits. Proposed law also adds certain delivery requirements that must be made within 10 business days and otherwise retains present law.

Present law provides that if the employer or payor provides the benefit that the employee claim is due, including any arrearage, on the returned form or letter of amicable demand within 7 business days of receipt of the employee's demand, the employer or payor shall not be subject to any claim for any penalties or attorney fees arising from the disputed payment, modification, suspension, termination, or controversion.

Proposed law changes the requirement of submission from 7 business days to 10 business days. Proposed law otherwise retains present law.

Present law allows the employer or payor to file a disputed claim against an employee, his dependent, or beneficiary only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary.

Proposed law removes provisions of present law that allows the employer or payor to file a disputed claim only when the employer or payor has alleged the employee, his dependent, or beneficiary has committed fraud that caused payment of a benefit that was not due. Proposed law otherwise retains present law.

(Amends R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1))