

2024 Regular Session

HOUSE BILL NO. 703

BY REPRESENTATIVES MELERINE, BEAULLIEU, HORTON, MIKE JOHNSON,  
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 ~~penalty shall not exceed a maximum of two thousand dollars in the aggregate for any~~  
4 ~~claim.~~ The maximum amount of penalties which may be imposed at a hearing on the  
5 merits regardless of the number of penalties which ~~might~~ may be imposed under this  
6 Section is eight thousand dollars. Attorney fees awarded pursuant to this Section  
7 shall be based on a sworn affidavit from the attorney with time records detailing the  
8 work performed, the date on which it was performed, and the time spent on each  
9 activity to the tenth of an hour, and shall be credited against any fees due pursuant  
10 to R.S. 23:1141. An award of penalties and attorney fees at any hearing on the  
11 merits shall be res judicata as to any and all claims for which penalties may be  
12 imposed under this Section which precedes the date of the hearing. Penalties shall  
13 be assessed in the 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)(a) This Subsection shall not apply if the claim is reasonably controverted  
2 or if such nonpayment results from conditions over which the employer or insurer  
3 had no control.

4           (b) For purposes of this Section, "reasonably controverted" means that the  
5 employer or the employer's representative acted in good faith and articulated an  
6 objective reason for denying the claim, even though the facts or law may be disputed  
7 and benefits are ultimately found to be owed. The burden of proof shall be on the  
8 party seeking attorney fees to prove by clear and convincing evidence that the claim  
9 is not reasonably controverted.

10          (3) This Subsection shall not apply if the employee has failed to submit  
11 amicable demand for the benefit in dispute to the employer or insurer, in writing with  
12 sufficient particularity and proof thereof, or if following receipt of the employee's  
13 amicable demand, the employer or insurer pays the disputed benefit as required by  
14 this Chapter within ten business days in the absence of clear and convincing  
15 evidence that the employer or insurer acted arbitrarily.

16          (4) This Subsection shall not apply if the employer corrects any failure to  
17 provide payment or any failure to consent to the employee's request to select a  
18 treating physician or change physicians, and consents to treatment or issues proper  
19 payment, together with any interest owed thereon, prior to being notified of the  
20 failure by the employee, a healthcare provider, or his representative.

21          ~~(3) Except as provided in Paragraph (4) of this Subsection, any additional~~  
22 ~~compensation paid by the employer or insurer pursuant to this Section shall be paid~~  
23 ~~directly to the employee.~~

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



1 receiving payments of compensation, ~~on or before~~ within ten business days of the  
2 effective date of a modification, suspension, termination, or controversy.

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

9 \* \* \*

10 D. If the injured employee is represented by an attorney, the notice shall also  
11 be provided to the employee's representative ~~by facsimile~~ any time within ten  
12 business days of the effective date of modification, suspension, termination or  
13 controversion by either certified mail, email, facsimile, hand-delivery, or any other  
14 reasonable commercial carrier express delivery. Proof that the notice was sent to the  
15 employee's representative by ~~facsimile~~ either certified mail, email, facsimile, hand-  
16 delivery, or any other reasonable commercial carrier express delivery shall be prima  
17 facie evidence of compliance with Subsection A of this Section.

18 \* \* \*

19 F.(1) Any injured employee or his representative who disagrees with any  
20 information provided on the notice form sent by the employer or payor, shall notify  
21 the employer or payor of the basis for disagreement by returning the form to the  
22 employer or payor as provided on the form, or by letter of amicable demand within  
23 ten business days from first receipt of the form referenced in Subsection B of this  
24 Section, and provide any amounts of compensation or medical benefits he believes  
25 appropriate.

26 (2) If no first payment of compensation has been made on the claim, any  
27 injured employee or his representative who contends that entitlement to  
28 compensation or medical benefits exists shall notify the employer or payor by letter

1 of amicable demand specifying the basis for such contention of entitlement to  
2 compensation or medical benefits.

3 (2) (3) No disputed claim shall be filed regarding any such disagreement or  
4 entitlement to compensation or medical benefits unless the notice required by this  
5 Section has been sent to the employer or payor either who initially sent the notice or  
6 was provided a letter of amicable demand pursuant to Paragraph (2) of this  
7 Subsection.

8 G.(1) If the employer or the payor provides the benefit that the employee  
9 claims is due, including any arrearage, on the returned form or letter of amicable  
10 demand within ~~seven~~ ten business days of receipt of the employee's demand, the  
11 employer or payor shall not be subject to any claim for any penalties or attorney fees  
12 arising from the disputed payment, modification, suspension, termination, or  
13 controversion.

14 \* \* \*

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

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





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, in the absence of clear and convincing evidence that the employer or insurer acted arbitrarily.

Proposed law defines reasonably controverted and provides that the burden of proof shall be on the party seeking attorney fees to prove by clear and convincing evidence that the claim is not reasonably controverted.

Proposed law provides that proposed law (R.S. 23:1201(F)) does not apply if the employer corrects any failure to provide payment or any failure to consent to the employee's request to select a treating physician or change physicians, and consents to treatment or issues proper payment, together with any interest owed thereon, prior to being notified of the failure by the employee, a healthcare provider, or his representative.

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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Revise provisions of present law (R.S. 23:1201(F)(1)) and proposed law (R.S. 23:1201(F)(1)) and add a provision regarding requirements of attorney fees awarded under present law (R.S. 23:1201(F)(1)).
2. Provide an exception for when an employer corrects a failure to provide payment or a failure to consent to an employee's request to select a treating physician.
3. Remove language in proposed law that allows sending the notice required in present law (R.S. 23:1201.1) by regular mail.
4. Define "reasonably controverted".
5. Provide a burden of proof for the party seeking attorney fees.
6. Make technical changes.