

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 time records detailing the work performed, the date on which it was  
8       performed, and the time spent on each activity to the tenth of an hour, and shall be  
9       credited against any fees due pursuant to R.S. 23:1141. An award of penalties and  
10      attorney fees at any hearing on the merits shall be res judicata as to any and all  
11      claims for which penalties may be imposed under this Section which precedes the  
12      date of the hearing. Penalties shall be assessed in the following manner:

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

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

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

26           (d) No amount paid as a penalty or attorney fee in accordance with this  
27      Subsection shall be included in any formula utilized to establish premium rates for  
28      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 articulated an objective reason for failing  
6           to provide payment in accordance with this Section or failing to consent to the  
7           employee's request to select a treating physician or change physicians, even though  
8           the facts or law may be disputed and benefits are ultimately found to be owed. The  
9           burden of proof shall be on the party seeking penalties and attorney fees to prove by  
10          clear and convincing evidence that the claim is not reasonably controverted.

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

17          (4) This Subsection shall not apply if the employer corrects any failure to  
18          provide payment and issues proper payment, together with any interest owed  
19          thereon, prior to being notified of the failure by the employee, a healthcare provider,  
20          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                   ~~(5) No amount paid as a penalty or attorney fee under this Subsection shall~~  
2                   ~~be included in any formula utilized to establish premium rates for workers'~~  
3                   ~~compensation insurance.~~

4   \*           \*           \*

5                   §1201.1. Controversion of compensation and medical benefits

6                   A. Upon the first payment of ~~compensation~~ indemnity benefits or upon any  
7                   modification, suspension, termination, or controversion of compensation or medical  
8                   benefits for any reason, including but not limited to issues of medical causation,  
9                   compensability of the claim, or issues arising out of R.S. 23:1121, 1124, 1208, and  
10                   1226, the employer or payor who has been notified of the claim, shall do all of the  
11                   following:

12                      (1) Prepare a "Notice of Modification, Suspension, Termination, or  
13                      Controversion of Compensation ~~and/or or~~ Medical Benefits".

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

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

24                      (4) Send the "Notice of Payment, Modification, Suspension, Termination,  
25                      or Controversion of Compensation ~~and/or or~~ Medical Benefits" to the injured  
26                      employee ~~by certified mail~~ any time within ten business days to the employee by  
27                      either certified mail, email, facsimile, hand-delivery, or any other reasonable  
28                      commercial carrier express delivery, to the address at which the employee is

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

1        was entitled to a preliminary determination pursuant to Paragraph (1) or (3) of this  
2        Subsection.

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

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

11                ~~(2)~~ (5) Any dispute by the employee or his representative to the request for  
12        a preliminary determination hearing by the employer or payor shall be filed by a  
13        formal motion with the court within ten business days of the employer's or payor's  
14        request for a preliminary determination hearing pursuant to this Section. Failure to  
15        file a motion disputing the request for a preliminary determination as required by this  
16        Paragraph will bar any objection to the right of the employer or payor to a  
17        preliminary determination hearing. If disputed by the parties, upon a rule to show  
18        cause held prior to the preliminary determination or any hearing held pursuant to this  
19        Section, the workers' compensation judge shall determine whether the employer is  
20        in compliance.

21    \*        \*        \*

22        §1314. Necessary allegations; dismissal of premature petition; dispute of benefits

23    \*        \*        \*

24                E.(1) Notwithstanding any other provision of this Section, the employer or  
25        payor shall be permitted to file a disputed claim against an employee, his dependent,  
26        or beneficiary ~~only when the employer or payor alleges the employee, his dependent,~~  
27        ~~or beneficiary has committed fraud as provided in R.S. 23:1208 which caused the~~  
28        ~~employer or payor to pay a benefit which was not due to the employee, his~~

1 ~~dependent, or beneficiary, or when the employer or payor is an aggrieved party~~

2 ~~appealing a decision of the medical director pursuant to R.S. 23:1203.1(K).~~

3 \* \* \*

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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)]

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HB 703 Reengrossed

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 removes provisions of present law that require payment for any and all compensation or medical benefits that remain unpaid or when consent is withheld.

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 provides that attorney fees awarded shall be based on time records detailing the work performed, the date on which it was performed, and the time spent on each activity to the 10<sup>th</sup> of an hour, and shall be credited against any fees due pursuant to present law (R.S. 23:1141).

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

Proposed law repeals 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 repeals 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 repeals 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, 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 and 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 seven 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 seven 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 allow 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.

The House Floor Amendments to the engrossed bill:

1. Remove the requirement of submitting a sworn affidavit by an attorney for attorney fees that are awarded pursuant to present law (R.S. 23:1201(F)(1)) and proposed law (R.S. 23:1201(F)(1)).
2. Revise the definition of "reasonably controverted".
3. Revise the provision of proposed law (R.S. 23:1201(F)(4)) that exempts an employer who corrects a failure to provide payment and subsequently issues a proper payment.
4. Make a technical change.