

Regular Session, 2014

SENATE BILL NO. 198

BY SENATOR RISER

WORKERS' COMPENSATION. Ensures compliance with requirements for mandatory workers' compensation coverage. (8/1/14)

1 AN ACT

2 To amend and reenact R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171,
3 1171.1(A), (B), (C), (D)(1), and (E)(1), and 1291(C)(5) and to enact R.S. 23:1170(C)
4 and 1171.1(F), and to repeal R.S. 23:1168(A)(5), relative to workers' compensation;
5 to require for compliance; to provide for reporting of compliant coverage; to provide
6 for penalties; to provide for matters to be determined by workers' compensation
7 judges; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171, 1171.1(A),
10 (B), (C), (D)(1), and (E)(1), and 1291(C)(5) are hereby amended and reenacted and R.S.
11 23:1170(C) and 1171.1(F) are hereby enacted to read as follows:

12 §1168. Ways of securing compensation to employees

13 A. An employer shall secure compensation to his employees in one of the
14 following ways:

15 (1) By insuring and keeping insured the payment of such compensation with
16 any stock corporation, mutual association, or other concern authorized to transact the
17 business of workers' compensation insurance in this state. When an insurer issues a

1 policy to provide workers' compensation benefits pursuant to the provisions of the
 2 Workers' Compensation Act, the insurer shall **report to the National Council on**
 3 **Compensation Insurance all policy information in accordance with the**
 4 **reporting guidelines established by the National Council on Compensation**
 5 **Insurance. Proof of coverage must be filed no later than thirty days after the**
 6 **effective date of coverage and include the name of each business entity**
 7 **operating in the state of Louisiana for which coverage is provided** ~~file, or cause~~
 8 ~~to be filed, with the director a notice in such form and detail as the director may~~
 9 ~~prescribe by rule and regulation. The notice shall contain the name, address, and~~
 10 ~~principal occupation of the employer, the number, effective date, and expiration date~~
 11 ~~of the policy, and such other information as may be required by the director. The~~
 12 ~~notice shall be filed by the insurer within thirty days after the effective date of the~~
 13 ~~policy.~~

14 * * *

15 ~~(4) By using any combination of life, accident, health, property, casualty or~~
 16 ~~other insurance policies offered:~~

17 ~~(a) By any stock corporation, mutual association or other concern authorized~~
 18 ~~to transact the business of insurance in this state;~~

19 ~~(b) By any group of individual, unincorporated alien insurers with assets held~~
 20 ~~in trust for the benefit of its United States policyholders in a sum not less than one~~
 21 ~~hundred million dollars and which is authorized to transact insurance in at least one~~
 22 ~~state; or~~

23 ~~(c) By any other insurer which has been approved by the commissioner of~~
 24 ~~insurance, and has capital and surplus, or the equivalent thereof, of at least ten~~
 25 ~~million dollars and its financial condition, as evidenced by its most recent annual~~
 26 ~~statement, conforms substantially to the same standards of solvency which would be~~
 27 ~~required if such insurer were licensed in this state.~~

28 ~~(5)~~**(4)** By furnishing satisfactory proof to the director of the employer's
 29 financial ability to pay such compensation. The director, pursuant to rules adopted

1 by the office for an individual self-insured or own risk carrier, including but not
2 limited to rules relative to security and excess coverage, shall require that an
3 employer:

4 * * *

5 B.(1) The director may waive the requirements of Paragraph A~~(5)~~(4) of this
6 Section if he finds any company able to pay benefits, and that the requirements of
7 these provisions are unnecessary. He shall establish rules which set standards for
8 such waiver.

9 (2) The director shall waive the requirements of Paragraph A~~(5)~~(4) of this
10 Section if any employer that is a municipality or other political subdivision of the
11 state is able to demonstrate financial responsibility and ability to pay benefits by the
12 filing of annual reports including statements of financial condition and summary loss
13 data detailing past claims experience.

14 * * *

15 §1170. Penalty for failure to secure workers' compensation insurance; assessment
16 and collection

17 A. In addition to any other penalty prescribed by law, any employer who fails
18 to secure compensation required by R.S. 23:1168 shall be liable for a civil penalty,
19 to be assessed by the ~~executive director or his designee~~ **workers' compensation**
20 **judge**, of not more than two hundred fifty dollars per employee for a first offense,
21 and liable for a civil penalty of not more than five hundred dollars per employee for
22 a second or subsequent offense; however, the maximum civil penalty for a first
23 offense shall not exceed ten thousand dollars for all related series of violations. All
24 civil penalties collected shall be deposited in the Office of Workers' Compensation
25 Administrative Fund established in R.S. 23:1291.1(E).

26 B. The ~~financial and compliance officer of the office of worker's~~
27 ~~compensation~~ **workers' compensation judge** shall assess ~~and collect~~ any civil
28 penalty incurred under R.S. 23:1170(A) against any employer who fails to provide
29 proof of compliance within fifteen days of any notice. **Any penalty assessed and**

1 **collected pursuant to this Section shall be forwarded to the fraud administrator**
2 **for collection.** In his discretion, the ~~financial and compliance officer~~ **fraud**
3 **administrator** may remit, mitigate, or negotiate said penalty if proof of the
4 mitigating circumstances is provided within fifteen days of notice of the assessment.
5 In determining the amount of the penalty to be assessed, or the amount agreed upon
6 in any negotiation, consideration shall be given to the appropriateness of such
7 penalty in light of the life of the business of the employer charged, the gravity of the
8 violation, and the extent to which the employer charged has complied with the
9 provisions of R.S. 23:1168, or has otherwise attempted to remedy the consequences
10 of the said violation. Individual proceedings shall be conducted pursuant to the
11 provisions of R.S. 23:1171.

12 **C. In addition to any penalties assessed in accordance with the provisions**
13 **of this Chapter, the workers' compensation judge shall order the employer to**
14 **provide proof of compliance with R.S. 23:1168 within forty-five days of the**
15 **order.**

16 §1171. Civil fine; hearing; appeal

17 ~~A. The financial and compliance officer shall determine from all of the~~
18 ~~evidence submitted by the employer a fair and equitable resolution of the violation,~~
19 ~~taking into consideration any mitigating circumstances timely submitted as required~~
20 ~~by R.S. 23:1170. The financial and compliance officer shall assess, upon~~
21 ~~examination of the information submitted, a penalty commensurate with the violation~~
22 ~~so adjudged. However, the employer may provide additional mitigating~~
23 ~~circumstances or evidence to the financial and compliance officer within ten days of~~
24 ~~the assessment, and a reevaluation of the penalty shall be conducted. Unless a formal~~
25 ~~hearing is requested pursuant to the provisions of R.S. 23:1171(B), the penalty shall~~
26 ~~become final within thirty days of assessment. Upon becoming final, the penalty~~
27 ~~shall be regarded as any other money judgment and may be pursued for collection~~
28 ~~as prescribed by law for any other such remedy.~~

29 ~~B. An employer may appeal the decision of the financial and compliance~~

1 ~~officer to the workers' compensation judge~~ **in the manner described in R.S.**
 2 **23:1310.5(B) for appealing decisions regarding disputed claims** ~~in the district in~~
 3 ~~which the business of the employer is located or East Baton Rouge Parish by filing,~~
 4 ~~within thirty days of the date of assessment, a written request for a formal hearing,~~
 5 ~~which request should be filed on a disputed claim form. All appeals to the workers'~~
 6 ~~compensation judge shall be de novo. A final order from a hearing may be appealed~~
 7 ~~to the appropriate court of appeal.~~

8 §1171.1. Discontinuance of business; injunction; procedure

9 A. The director, **or his designee**, shall investigate an employer if he receives
 10 information from any person or entity that such employer has failed to provide
 11 security for compensation as required by R.S. 23:1168. If such allegations can be
 12 reasonably substantiated, **and the employer has previously been subject to a civil**
 13 **penalty pursuant to R.S. 23:1170 or criminal penalties pursuant to R.S. 23:1172,**
 14 **the director, or his designee**, and the employer has previously been fined under
 15 R.S. 23:1170 or been penalized under R.S. 23:1172, the director shall notify the
 16 employer that, unless he can show proof of compliance with R.S. 23:1168 **within**
 17 **fifteen days**, he may **shall** be subject to further fines and penalties including but not
 18 limited to an injunction against further business operations **a civil penalty pursuant**
 19 **to the provisions of R.S. 23:1170.**

20 B. ~~If within fifteen days of the employer's receipt of such notice, he has not~~
 21 ~~submitted to the director satisfactory proof of such compliance, the director shall set~~
 22 ~~the matter for hearing in accordance with the procedures set forth by law for claims~~
 23 ~~for workers' compensation benefits~~ **If such allegations can be reasonably**
 24 **substantiated and the employer has been fined under R.S. 23:1170 or penalized**
 25 **under R.S. 23:1172, the director shall notify the employer that unless he can**
 26 **show proof of compliance with R.S. 23:1168 within fifteen days, he shall be**
 27 **subject to further fines and penalties, including but not limited to an injunction**
 28 **against further business operations.**

29 C. **If within fifteen days of the employer's receipt of such notice he has**

1 **not submitted to the director satisfactory proof of such compliance, the director**
 2 **or his designee shall request the workers' compensation judge of any district**
 3 **where the employer does business to set the matter for hearing in accordance**
 4 **with the procedures set forth by law for claims for workers' compensation**
 5 **benefits. Upon the request of the director or his designee, the workers'**
 6 **compensation judge shall issue a rule to show cause to the employer why he**
 7 **should not be fined or penalized for failure to show proof of compliance with**
 8 **R.S. 23:1168 when requested.**

9 **D.** (1) If at such hearing, it is determined that the employer is in violation of
 10 his obligation under R.S. 23:1168, the workers' compensation judge ~~may~~ **shall** fine
 11 the employer in the manner provided pursuant to R.S. 23:1170(A) and shall order the
 12 employer to ~~secure workers' compensation insurance and file evidence of coverage~~
 13 ~~within ninety days of the order~~ **provide proof of compliance with R.S. 23:1168**
 14 **within forty-five days of the order by securing the appropriate coverage.** Should
 15 the employer fail to file such evidence, the workers' compensation judge shall **assess**
 16 **a fine for a second offense and** issue a cease and desist order prohibiting the
 17 employer from continuing its business operations until such time as the employer
 18 complies with R.S. 23:1168, and all fines issued are paid in full.

* * *

20 ~~D.~~ **E.** (1) After the issuance of a cease and desist order and upon the request
 21 of the director **or the director's designee**, the attorney general shall immediately
 22 institute proceedings for injunctive relief against the employer in the district court
 23 of any judicial district in this state where the employer does business. In such district
 24 court proceedings, a certified copy of any cease and desist order entered by the
 25 workers' compensation judge in accordance with this Section based upon evidence
 26 in the record shall be prima facie evidence of the facts found in such record.

* * *

28 ~~E.~~ **F.** The issuance of an order to cease and desist or the issuance of a
 29 temporary restraining order or an injunction against an employer for failure to insure

1 or keep insurance in force as required by R.S. 23:1168 shall be in addition to any
2 civil or criminal penalties imposed by any other provision of law or Paragraph C(1)
3 of this Section.

4 PART IV. ADMINISTRATION OF CLAIMS

5 SUBPART A. OFFICE OF WORKERS' COMPENSATION ADMINISTRATION

6 §1291. Creation, powers, and duties of the office of workers' compensation
7 administration

8 * * *

9 C. There shall be established within the office the following sections:

10 * * *

11 (5) A workers' compensation fraud section, which shall administer the
12 provisions of R.S. **23:1170, 1171, 1171.1**, ~~23:1172, 1172.1, 1172.2~~, 1208, and 1295
13 by investigating allegations of workers' compensation fraud **and non-compliance**
14 **by employers**.

15 * * *

16 Section 2. R.S. 23:1168(A)(5) is hereby repealed.

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

DIGEST

Riser (SB 198)

Present law provides that an employer doing business in the state of Louisiana must provide workers' compensation coverage for the employees of the business.

Present law provides that an employer may provide statutorily required workers' compensation coverage for employees by purchasing coverage from a stock corporation, mutual association, or other concern authorized to transact the business of workers' compensation insurance in this state. Present law provides that the workers' compensation insurer shall file notice of coverage with the director of the office of workers' compensation with the Workforce Commission.

Proposed law retains present law but changes the requirement that the notice of coverage be sent to the National Council on Compensation Insurance instead of the director of the office of workers' compensation.

Proposed law provides that proof of coverage must be filed no later than 30 days after the effective date of coverage and include the name of each business entity operating in the state of La. for which coverage has been obtained.

Present law provides that in addition to any other penalty prescribed by law, any employer

who fails to secure compensation required by present law shall be liable for a civil penalty, to be assessed by the executive director or his designee, of not more than \$250.00 per employee for a first offense, and liable for a civil penalty of not more than \$500.00 per employee for a second or subsequent offense; however, the maximum civil penalty for a first offense shall not exceed \$10,000 for all related series of violations.

Proposed law retains present law but provides that a workers' compensation judge shall assess any civil penalty against an employer who fails to provide proof of compliance within 15 days of any notice.

Proposed law provides that, in addition to any penalties assessed, the workers' compensation judge shall order the employer to provide proof of workers' compensation coverage within 45 days of the order.

Present law provides that the financial and compliance officer shall determine, based upon all of the evidence submitted by the employer, a fair and equitable resolution of the violation, taking into consideration any mitigating circumstances. Present law provides that the financial and compliance officer shall assess a penalty commensurate with the violation so adjudged. Present law provides that any appeal regarding a disputed claim shall be decided in the district court in which the business of the employer is located or East Baton Rouge Parish.

Proposed law retains present law but provides that the workers' compensation judge shall conduct the hearing on the matter and an appeal may be made in the appropriate circuit court of appeal.

Present law provides that the director shall investigate an employer if he receives information from any person or entity that such employer has failed to provide workers' compensation coverage for his employees. Present law provides that if such allegations can be reasonably substantiated, the director, shall notify the employer that, unless he can show proof of coverage, he may be subject to further fines and penalties including but not limited to an injunction against further business operations.

Proposed law retains present law but provides that if such allegations can be reasonably substantiated and the employer has been fined or penalized under, the director, or his designee, shall notify the employer that unless he can show proof of coverage within 15 days, the employer will be subject to further fines and penalties including but not limited to an injunction against further business operations.

Proposed law provides that if within 15 days of the employer's receipt of such notice he has not submitted to the director satisfactory proof of such compliance, the director or his designee shall request the workers' compensation judge of any district where the employer does business to set the matter for hearing and the workers' compensation judge shall issue a rule to show cause to the employer why he should not be fined or penalized for failure to show proof of workers' compensation coverage.

Effective August 1, 2014.

(Amends R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171, 1171.1(A), (B), (C), (D)(1), and (E)(1), and 1291(C)(5); adds R.S. 23:1170(C) and 1171.1(F); repeals R.S. 23:1168(A)(5))