

Regular Session, 2014

HOUSE BILL NO. 1069

BY REPRESENTATIVES BROADWATER AND HENRY

WORKERS COMPENSATION: Provides with respect to variable wage employment contracts

1 AN ACT

2 To amend and reenact R.S. 23:1021(13)(e) through (g) and to enact R.S. 23:1021(13)(h) and  
3 (14), relative to workers' compensation; to provide with respect to average weekly  
4 wage; to provide for the calculation of average weekly wage for any professional  
5 athlete contracted as an employee who earns a variable wage under a written  
6 employment contract dependent on specific activity, job description, job status, or  
7 temporal consideration under certain circumstances; to provide for definitions; and  
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 23:1021(13)(e) through (g) are hereby amended and reenacted and  
11 R.S. 23:1021(13)(h) and (14) are hereby enacted to read as follows:

12 §1021. Terms defined

13 As used in this Chapter, unless the context clearly indicates otherwise, the  
14 following terms shall be given the meaning ascribed to them in this Section:

15 \* \* \*

16 (13) "Wages" means average weekly wage at the time of the accident. The  
17 average weekly wage shall be determined as follows:

18 \* \* \*

19 (e) Professional athlete variable wage employment contract. If a  
20 professional athlete is employed by a written contract for hire and that written

1 contract for hire provides for variable wages dependent on the employee's activity,  
2 job description, job status, any temporal consideration, or any other condition based  
3 on a variable wage rate, then the employee's average weekly wage shall be calculated  
4 as the employee's actual earnings at the time of his injury. The average weekly  
5 wage for a professional athlete shall be calculated as follows:

6 (i) If the professional athlete's actual contractual wage rate at the time of  
7 injury is based on a daily wage rate, his average weekly wage is calculated by  
8 multiplying the actual contractual daily wage rate on the date of injury by seven  
9 days.

10 (ii) If the professional athlete's actual contractual wage rate at the time of  
11 injury is based on a weekly wage rate, the weekly wage rate at the time of injury is  
12 the calculated average weekly wage.

13 (iii) If the professional athlete's actual contractual wage rate at the time of  
14 injury is based on a monthly wage rate, his average weekly wage is calculated by  
15 dividing the actual monthly wage rate at the time of the injury by four and three-  
16 tenths weeks.

17 ~~(e)~~(f) Exceptions. For municipal police officers, additional compensation  
18 paid by the state pursuant to R.S. 33:2218.4 shall not be included in the calculation  
19 and computation of total salary or average weekly wage to the extent such officer  
20 continues to receive such additional compensation during the period of his disability.

21 ~~(f)~~(g) Income tax. In the determination of "wages" and the average weekly  
22 wage at the time of the accident, no amount shall be included for any benefit or form  
23 of compensation which is not taxable to an employee for federal income tax  
24 purposes; however, any amount withheld by the employer to fund any nontaxable or  
25 tax-deferred benefit provided by the employer and which was elected by the  
26 employee in lieu of taxable earnings shall be included in the calculation of the  
27 employee's wage and average weekly wage including but not limited to any amount  
28 withheld by the employer to fund any health insurance benefit provided by the

1 employer and which was elected by the employee in lieu of taxable earnings shall be  
2 included in the calculation of the employee's wage and average weekly wage.

3 ~~(g)~~ (h) Date of accident. In occupational disease claims the date of the  
4 accident for purposes of determining the employee's average weekly wage shall be  
5 the date of the employee's last employment with the employer from whom benefits  
6 are claimed or the date of his last injurious exposure to conditions in his  
7 employment, whichever date occurs later.

8 (14) "Professional athlete" means any person who earns wages as a skilled  
9 athlete pursuant to a written professional player employment contract.

#### 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)]

Broadwater

HB No. 1069

**Abstract:** Provides for the calculation of average weekly wage for variable wage employment contracts for professional athletes.

Present law provides for the determination of the average weekly wage of an injured worker.

Present law provides the method of calculating average weekly wage depending on how an employee was being compensated at the time of injury.

Present law provides definitions.

Proposed law defines "professional athlete" to mean any person who earns wages as a skilled athlete pursuant to a written professional player employment contract.

Proposed law provides that for if a professional athlete is employed by a written contract for hire that provides for variable wages dependent on an employee's activity, job description, job status, a temporal consideration, or any other condition based on a variable wage rate, his average weekly wage shall be calculated as the rate of his earnings at the time of injury.

Proposed law provides that if an employee's actual contractual wage at the time of injury is based on a daily rate, then his average weekly wage shall be calculated by multiplying the employee's actual contractual daily wage rate on the date of injury by seven days.

Proposed law provides that if an employee's actual contractual wage rate at the time of injury is based on a weekly wage rate, then his actual contractual weekly wage rate at the time of injury shall be the calculated average weekly wage rate.

Proposed law provides that if the employee's actual contractual wage rate at the time of injury is based on a monthly wage rate, then his average weekly wage shall be calculated by dividing his actual monthly wage rate at the time of injury by four and three-tenths weeks.

Proposed law provides that any written employment contract that does not provide for the same wage rate for each pay period during the entire term of the contract shall be deemed to be a variable wage employment contract.

(Amends R.S. 23:1021(13)(e)-(g); Adds R.S. 23:1021(13)(h) and (14))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Specified that the variable wage contracts in proposed law apply to professional athletes.
2. Defined "professional athlete" to mean any person who earns wages as a skilled athlete pursuant to a written professional player employment contract.