

HOUSE COMMITTEE AMENDMENTS

Substitute for Original House Bill No. 606 by Representative Cromer as proposed by the House Committee on Labor and Industrial Relations

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 23:1121(B)(1) and (5), 1124(B), 1226(B)(3), 1310.8, and 1314, and to enact R.S. 23:1021(13) and 1201.1, relative to workers' compensation; to provide with respect to choice of physician; to provide with respect to medical examinations; to provide with respect to the payment of benefits; to provide for hearings; to provide for notice requirements; to provide with respect to the modification, suspension, termination, or controversion of benefits; to provide for procedure; to provide for the payment of benefits for rehabilitation of injured employees; to provide for disputes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1121(B)(1) and (5), 1124(B), 1226(B)(3), 1310.8, and 1314 are hereby amended and reenacted and R.S. 23:1021(13) and 1201.1 are hereby enacted to read as follows:

§1021. Terms defined

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

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(13) "Payor" means the entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

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§1121. Examination of injured employee

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B.(1) The employee shall have the right to select one treating physician in any field or specialty. The employee shall have a right to ~~the type of~~ an expedited

summary proceeding ~~provided for in R.S. 23:1124(B)~~, when denied his right to an initial physician of choice. The workers' compensation judge shall set the hearing date for the matter within three days of receiving the employee's motion for the expedited hearing. The hearing shall be held not less than ten nor more than thirty days after the employee or his attorney files the motion for an expedited hearing. The workers' compensation judge shall provide notice of the hearing date to the employer and insurer at the same time and in the same manner that notice of the hearing date is provided to the employee or his attorney. For the purposes of this Section, an employee shall not be required to submit the dispute on the medical examination to mediation nor go through a pretrial conference before obtaining a hearing. The hearing shall be conducted as a rule to show cause. The workers' compensation judge shall order the employer or payor to authorize the claimant's choice of physician unless the employer or payor can show good cause for his refusal. Any claims for penalties and attorneys fees alleged by the employee will be subject to the provisions of R.S. 23:1201.1. After his initial choice the employee shall obtain prior consent from the employer or his workers' compensation carrier for a change of treating physician within that same field or specialty. The employee, however, is not required to obtain approval for change to a treating physician in another field or specialty.

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(5) If the employee fails or refuses to sign the form as provided in Subparagraph (2)(b) and Paragraph (3) of this Subsection, the employer or his insurer shall be entitled to seek an expedited hearing to be held within ten days, and upon order of the court, may suspend medical benefits until such time as the employee complies with Subparagraph (2)(b) and Paragraph (3) of this Subsection. Any suspension by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1.

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§1124. Refusal to submit to examination; effect on right to compensation

~~A.~~ If the employee refuses to submit himself to a medical examination at the behest of the employer or an examination conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to compensation and to take or prosecute any further proceedings under this Chapter shall be suspended until the examination takes place. The employee shall receive at least fourteen days written notice prior to the examination. When a right to compensation is suspended no compensation shall be payable in respect to the period of suspension.

~~B.~~ An employer or insurer who seeks to compel an employee's compliance with a medical examination shall be granted an expedited hearing. The workers' compensation judge shall set a hearing date for the matter within three days of receiving the employer's or insurer's motion. The hearing shall be held not less than ten nor more than thirty days after the employee, or his attorney, receives notice, delivered by certified or registered mail, of the employer's or insurer's motion. The workers' compensation judge shall provide notice of the hearing date to the employer and insurer at the same time, and in the same manner, that notice of the hearing date is provided to the employee or his attorney. For the purposes of this Section, an employer or insurer need not submit the dispute on the medical examination to mediation, nor go through a pretrial conference, before obtaining a hearing. The hearing shall be conducted as a rule to show cause. Unless the employee can show good cause for his refusal or obstruction of the medical examination, the workers' compensation judge shall suspend the employee's compensation and prosecution rights according to Subsection A of this Section.

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§1201.1. Controversion of compensation and medical benefits

A. The employer or the payor shall send a notice to the office and to the employee or the employee's representative on the form promulgated by the office in accordance with this Section upon making the first payment of compensation, and upon any subsequent act of modification, suspension, termination, or controversion of compensation or medical benefits or for any reason including subsequent issues of medical relatedness, medical causation, compensability of the claim, or issues

arising out of R.S. 23:1121, 1124 and 1226, occurring after the first payment. The provisions of this Section shall not apply to questions of medical necessity as provided by R.S. 23:1203.1.

B. The employer or the payor shall do all of the following:

(1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits". The form for the notice shall be promulgated by the office.

(2) Send the notice of the initial indemnity payment to the injured employee with the first payment of compensation. If the injured employee is represented, the notice may be provided to the employee's representative by facsimile on the date of mailing of the first payment of compensation.

(3) Send a copy of the notice of the first payment of compensation to the office within ten days from the date the original notice was sent to the injured employee, or by facsimile to the injured employee's representative. The director shall make the notice available upon request by the employee or the employee's representative.

(4) Send the "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the injured employee by certified mail, to the address at which the employee is receiving payments of compensation, on or before the effective date of such modification, suspension, termination, or controversion. If the injured employee is represented, the notice may be provided to the employee's representative by facsimile.

(5) Send a copy of the "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same business day as sent to the employee or to his representative.

C. (1) Any injured employee or his representative who disagrees with any information provided on the notice form sent by the employer or payor, shall notify the employer or payor of the basis for disagreement by returning the form to the employer or payor as provided on the form, or by letter of amicable demand, and provide any amounts of compensation he believes appropriate. No disputed claim

shall be filed regarding any such disagreement unless the notice required by this Subparagraph has been sent to the employer or payor who initially sent the notice.

(2) If the employer or the payor provides the benefits that the employee claims 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 controversy.

(3) If the employer or payor does not provide the benefit that the employee claims is due, the employee may file a disputed claim for benefits provided it is filed within the prescriptive period established under R.S. 23:1209. If the prescription date of the claim occurs within the seven-day waiting period, the employee will be allowed to file a disputed claim without waiting the seven business days as provided in R.S. 23:1201.1(2)(b). However, the employer or payor shall still be allowed seven business days to provide the benefit that the employee claims is due, and if the employer does provide the benefit, the disputed claim will be moot regarding the issues arising out of the payment, suspension, modification, termination, or controversion of benefits. All other issues alleged in the disputed claim will be unaffected by the payment.

(4) Only the employer or the payor who initially sent the notice and has complied with the procedures established in this Section regarding payment, suspension modification, termination, or controversion of benefits, who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice of initial payment, modification, suspension, termination or notice of controversion.

(5) An employer or payor who has not provided the first payment as required by R.S. 23:1221, or who has not followed the procedures established in this Section regarding modification, suspension, termination, or notice of controversion of compensation, including failure to request a preliminary determination hearing, may be subject to an award of penalties and attorney fees pursuant to R.S. 23:1201.

D. (1) Upon the filing of the request for a preliminary determination hearing, the workers' compensation judge shall initiate a telephone status conference with the parties to schedule the discovery deadlines and to facilitate the exchange of documents. The scope of the discovery will be limited to the issues raised in the disputed payment, suspension, modification, termination, or controversion of benefits. The preliminary determination hearing shall be a contradictory hearing at which all parties shall have the opportunity to introduce evidence.

(2) The testimony of physicians may be introduced by certified records or deposition. The parties may agree to allow uncertified medical records and physician reports to be introduced into evidence. Witnesses may testify at the hearing or, if agreed on by the parties, may offer testimony by introduction of a deposition.

(3) The preliminary determination hearing shall be held no later than ninety days from the scheduling conference. However, upon a showing of good cause, one extension of an additional thirty days is permitted upon approval by the workers' compensation judge. The workers' compensation judge shall issue a preliminary determination no later than thirty days after the hearing.

(4) Any employer or payor requesting a preliminary determination hearing shall produce all documentation relied on by the employer or payor in calculating, modifying, suspending, terminating, or controverting the employee's benefits. These documents shall be disclosed to the employee or the employee's representative within ten days of the request for the preliminary determination hearing.

E.(1) The employer or payor shall, within ten calendar days of the mailing of the determination from the worker's compensation judge, do either of the following:

(a) Accept and comply with preliminary determination of the workers' compensation judge regarding the payment, suspension, modification, termination, or controversion of benefits and mail a revised "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the

injured employee or employee's representative, along with any payment amount determined, and any arrearage due.

(b) Notify the injured employee or his representative in writing that the employer or payor does not accept the determination.

(2) Any employer or payor who accepts and complies with the workers' compensation judge's determination within ten calendar days, shall not be subject to any penalty or attorney fees arising out of the original notice of compensation/controversion of compensation and/or medical benefits which was the subject of the preliminary hearing.

(3) Any employer or payor who accepts and complies with the workers' compensation judge's determination, but who disagrees with such preliminary determination, shall notify the court within ten days of receipt of the preliminary determination of his desire to proceed to a trial on the merits of the matters that were the subject of the preliminary hearing.

(4) Any employer or payor who does not accept the workers' compensation judge's determination or fails to comply with the determination within ten calendar days, may, at the trial on the merits, be subject to an award of penalties and attorney fees pursuant to R.S. 23:1201, arising out of the issues raised in the original notice of payment, modification, suspension, termination, or controversion of benefits, which was the subject of the preliminary hearing.

(5) Any injured employee who disagrees with the preliminary determination shall notify the court within ten days of the receipt of such preliminary determination of his desire to proceed to a trial on the merits of the matters that were the subject of the preliminary hearing. If the employer or payor has accepted and complied with the preliminary hearing determination, the employer or payor shall also be entitled to litigate all issues including those issues presented at the preliminary determination hearing.

(6) Any employer or payor who accepts and complies with the determination of the worker's compensation judge, and who does not request to proceed to trial on the merits of the matters that were the subject of the preliminary hearing, shall retain

the right to further controvert future matters. The workers' compensation judge's determination shall not be considered an order concerning benefits due requiring modification, nor shall the determination be considered res judicata of any matters which were the subject of the preliminary hearing. The acceptance of the preliminary determination by the employer or payor shall not be considered an admission.

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§1226. Rehabilitation of injured employees

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B.

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(3)(a) The employer shall be responsible for the selection of a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training. Should the employer refuse to provide these services, or a dispute arises concerning the work of the vocational counselor, the employee may file a claim with the office to review the need for such services or the quality of services being provided. ~~The procedure for hearing such claims shall be expedited as provided in R.S. 23:1124.~~ shall be heard in an expedited hearing. The workers' compensation judge shall set a hearing date within three days of receiving the employer's or payor's motion. The hearing shall be held not less than ten, nor more than thirty days, after the employee or his representative receives notice, delivered by certified or registered mail, of the employer's or payor's motion. The workers' compensation judge shall provide notice of the hearing date to the employer and payor at the same time and in the same manner that notice of the hearing date is provided to the employee or his attorney. For the purposes of this Section, an employee shall not be required to submit the dispute on the medical examination to mediation or go through a pretrial conference before obtaining a hearing. The hearing shall be conducted as a rule to show cause. Unless the employee can show good cause for his refusal to cooperate with the vocational rehabilitation counselor, the workers' compensation judge may order the reduction

to continue until the employee cooperates with the vocation rehabilitation counselor.
If the employee can show good cause for his refusal to cooperate with the vocational
rehabilitation counselor, the workers' compensation judge shall order the suspension
of the reduction of benefits lifted and the payment of all arrearages due. Any
suspension by the employer or payor shall be made in accordance with the provisions
of R.S. 23:1201.1.

(b) An employee shall have no right of action against a vocational counselor for tort damages related to the performance of vocational services unless and until he has exhausted the administrative remedy provided for in Subparagraph (a) of this Paragraph. The running of prescription shall be suspended during the pendency of the administrative proceedings provided for in this Paragraph.

(c) ~~The expedited procedure shall also be made available to the employer to require the employee's cooperation in the rehabilitation process.~~ Refusal to accept rehabilitation as deemed necessary by the worker's compensation judge shall result in a fifty percent reduction in weekly compensation, including supplemental earnings benefits pursuant to R.S. 23:1221(3), for each week of the period of refusal.

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§1310.8. Jurisdiction continuing; determining as to final settlement

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B. Upon the ~~application~~ motion of any party in interest, on the ground of a change in conditions, the workers' compensation judge may, after a contradictory hearing, review any award, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Workers' Compensation Act, and shall state his conclusions of fact and rulings of law, and the director shall immediately send to the parties a copy of the award.

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

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E. Notwithstanding any other provision of this Section, the employer ~~shall be permitted to file a disputed claim to controvert benefits or concerning any other dispute arising under this Chapter~~ or payor shall be permitted to file a disputed claim against an employee, his dependant, or beneficiary only when the employer or payor alleges the employee has committed fraud as defined by R.S. 23:1208 which caused the employer or payor to pay a benefit which was not due to the employee.

Notwithstanding any other provision of this Section, the employer or payor shall be permitted to file a disputed claim against a person or entity other than an injured employee, his dependent, or beneficiary concerning any other dispute arising under this Chapter.

Section 2. This Act is declared to be remedial, curative, and procedural and therefore is to be applied retroactively as well as prospectively.

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)]

Abstract: Provides with respect to workers' compensation.

Present law (R.S. 23:1121) provides for the examination of an injured employee.

Present law requires an injured employee to be examined by a qualified medical practitioner as soon after the accident as demanded.

Present law further provides that the examination shall be paid for by the employer.

Proposed law retains present law.

Present law provides the employee with the right to select one treating physician in any field or specialty.

Proposed law retains present law.

Present law (R.S. 23:1124) provides that an employer or insurer who seeks to compel an employee's compliance with a medical examination shall be granted an expedited hearing.

Proposed law deletes present law and provides that an employee shall have a right to an expedited hearing when denied his right to an initial physician of choice.

Proposed law (R.S. 23:1121) provides that the workers' compensation judge shall set a hearing date within 3 days of receiving the employee's motion, and that the hearing shall be held between 10 and 30 days after the employee files the motion.

Proposed law requires that the judge notify all parties of the hearing date in the same manner and at the same time.

Proposed law requires the authorization of the employee's choice of physician unless good cause is shown as to why it should not be authorized.

Proposed law defines "payor" to mean the entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

Proposed law requires the payor to send notice to the office, the employee, and the employee's representative upon making the 1st payment of compensation, and upon any modification, suspension, termination, or controversion of compensation or medical benefits.

Proposed law does not apply in cases of medical necessity as defined by present law (R.S. 23:1203.1).

Proposed law requires the employer or payor to prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".

Proposed law further requires the employer or payor to send a copy of the notice of the 1st payment of compensation to the office within 10 days of the date original notice was sent to the injured employee.

Proposed law requires the director to make the notice available upon request of the employee.

Proposed law requires the employer or payor to send a copy of the "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same day as it was sent to the employee.

Proposed law provides that if an injured employee disagrees with any information on the notice form, he shall notify the employer or payor of the basis for disagreement by returning the form to the employer or payor, or by letter of amicable demand, and provide any amounts of compensation he believes appropriate.

Proposed law provides that if the employer or payor provides the benefits that the employee claims he is due, including any arrearage, within 7 days of the demand, he shall not be subject to any penalties or attorney fees.

Proposed law provides that if the employer or payor does not provide the benefits that the employee claims is due, the employee may file a disputed claim for benefits.

Proposed law provides that only the employer or payor who initially sent the notice as required and has complied with the provisions of proposed law, who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice.

Proposed law provides that an employer or payor who does not comply may be subject to penalties and attorney fees.

Proposed law provides that upon the filing of the request for a preliminary determination hearing, the workers' compensation judge shall initiate a telephone status conference to schedule the discovery deadlines and to facilitate the exchange of documents. The discovery will be limited to the issues raised in the disputed payment, suspension, modification, termination, or controversion of benefits.

Proposed law provides that the preliminary determination hearing shall be a contradictory hearing at which all parties may introduce evidence.

Proposed law allows the testimony of physicians by certified records or deposition, or, when the parties agree, uncertified medical records and physician reports may be introduced into evidence.

Proposed law allows witnesses to testify or offer testimony by deposition.

Proposed law requires the preliminary determination hearing to be held no later than 90 days from the scheduling conference, unless a 30 day extension is allowed for good cause.

Proposed law requires that any employer or payor who requests a preliminary hearing must produce all documentation he relied upon in calculating the employee's benefits.

Proposed law requires the employer to, within 10 calendar days, either accept and comply with the preliminary determination of the workers' compensation judge and mail a revised notice to the injured employee or notify the injured employee that he does not accept the determination.

Proposed law provides that if the injured employee who disagrees with the preliminary determination, he shall notify the court within 10 days of his desire to proceed to a trial on the merits.

Proposed law reserves the right of the employer or payor who does comply with the determination, to further controvert future matters. The acceptance of the preliminary determination by the employer or payor shall not be considered an admission.

Present law (R.S. 23:1226) provides that the employer shall be responsible for the selection of a licensed professional rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training.

Proposed law retains present law.

Present law provides that if the employer refuses to provide the services of a vocational rehabilitation counselor, the employee may file a claim to review the need for the services.

Proposed law provides that disputes shall be heard in an expedited hearing.

Proposed law requires the workers' compensation judge to set a hearing date within 3 days of receiving the motion, and that the hearing shall take place between 10 and 30 days after the employee receives the notice of the motion.

Proposed law requires the workers' compensation judge to provide the notice and the hearing date to the employer or the payor at the same time and in the same manner as it is provided to the injured employee and his representative.

Proposed law does not require an employee to submit the dispute on the medical examination to mediation or go through pretrial conference before obtaining a hearing.

Proposed law provides that the hearing shall be conducted as a rule to show cause.

Present law (R.S. 23:1310.8) provides for jurisdiction of the workers' compensation judge in claim resolution.

Present law provides that upon the application of any party of interest, on the ground of a change in conditions, the workers' compensation judge may review any award and may make an award ending, diminishing, or increasing the compensation subject to the maximum or minimum provided in the present law.

Proposed law changes "application" to "motion" of any party of interest, but otherwise retains present law.

Present law (R.S. 23:1314) allows an employer to file a disputed claim to controvert benefits or concerning any other dispute in present law.

Proposed law provides that the employer or payor may file a disputed claim against an employee, his dependant, or his beneficiary only when the employer or payor alleges the employee has committed fraud.

Proposed law shall be remedial, curative, and procedural and shall be applied retroactively.

(Amends R.S. 23:1121(B)(1) and (5), 1124(B), 1226(B)(3), 1310.8, and 1314; Adds R.S. 23:1021(13) and 1201.1)