

Regular Session, 2013

HOUSE BILL NO. 728 (Substitute for House Bill No. 606 by Representative Cromer)

BY REPRESENTATIVE CROMER AND SENATORS CORTEZ AND CROWE

1 AN ACT

2 To amend and reenact R.S. 23:1121(B)(1) and (5), 1124, 1201(H), 1208(F), (G), and (H),
3 1226(B)(3), 1310.8(B), 1314(E), and to enact R.S. 23:1021(13) and 1201.1, relative
4 to workers' compensation; to provide with respect to choice of physician; to provide
5 with respect to medical examinations; to provide with respect to the payment of
6 benefits; to provide for hearing procedures; to provide for notice requirements; to
7 provide with respect to the modification, suspension, termination, or controversion
8 of benefits; to provide for procedure; to provide for the payment of benefits for
9 rehabilitation of injured employees; to provide for disputes; and to provide for
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 23:1121(B)(1) and (5), 1124,1201(H), 1208(F), (G), and (H),
13 1226(B)(3), 1310.8(B), and 1314(E) are hereby amended and reenacted and R.S.
14 23:1021(13) and 1201.1 are hereby enacted to read as follows:

15 §1021. Terms defined

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

18 * * *

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

21 * * *

22 §1121. Examination of injured employee

23 * * *

1 ~~(i) Send a revised notice of payment along with a revised payment in~~
2 ~~accordance therewith to the injured employee or the employee's representative.~~

3 ~~(ii) If the payor believes that the amount determined in the original notice~~
4 ~~of payment was correct, then the payor shall file a request for preliminary~~
5 ~~determination, on a form to be promulgated by the office, and shall provide a copy~~
6 ~~to the injured employee or the employee's representative.~~

7 ~~(c) The preliminary determination shall be performed by the director's~~
8 ~~designee, who shall be a workers' compensation judge specifically assigned to handle~~
9 ~~preliminary determinations. Such preliminary determination hearing shall occur~~
10 ~~within fifteen days of the filing of a request.~~

11 ~~(d) The injured employee, the employee's representative, the payor and the~~
12 ~~employer, which includes the direct employer of a statutory employee pursuant to~~
13 ~~R.S. 23:1061, shall participate in a preliminary determination hearing by phone. The~~
14 ~~workers' compensation judge may require any of these parties to produce relevant~~
15 ~~records necessary for the determination of compensation provided for in the notice~~
16 ~~of payment. No later than thirty days from the filing of the request for a preliminary~~
17 ~~determination, the workers' compensation judge shall provide, in writing, a~~
18 ~~recommended amount of compensation.~~

19 ~~(e) The payor shall, within ten calendar days of the mailing of the~~
20 ~~recommendation from the workers' compensation judge, either mail to the injured~~
21 ~~employee or the employee's representative a revised notice of payment with the~~
22 ~~recommended amount if such recommended amount is different from that which was~~
23 ~~previously provided on the initial notice of payment, or notify the injured worker or~~
24 ~~the employee's representative in writing that the payor does not accept the~~
25 ~~recommendation. No disputed claim for compensation regarding the amount of~~
26 ~~compensation due shall be filed until the provisions of this Subsection have been~~
27 ~~exhausted unless such a disputed claim is in regard to a payor's failure to provide a~~
28 ~~notice of payment as required by this Subsection. A payor who provides the~~
29 ~~compensation amounts due as recommended by the workers' compensation judge~~

1 shall not be subject to any penalty and attorney fees regarding such calculation of the
2 compensation due and payment provided with the revised notice of payment.

3 ~~(f) A payor who provides the compensation amounts due as recommended~~
4 ~~by the workers' compensation judge's preliminary recommendation and who~~
5 ~~disagrees with such preliminary recommendation shall file a disputed claim for~~
6 ~~compensation within fifteen days of mailing the revised notice of payment and~~
7 ~~compensation amount due.~~

8 ~~(3)~~ Within fourteen days after the final payment of compensation has been
9 made, the employer or insurer shall send a notice to the office, in the manner
10 prescribed by the rules of the director, stating:

- 11 (1) The name of the injured employee or any other person to whom
- 12 compensation has been paid, or both.
- 13 (2) The date of injury or death.
- 14 (3) The dates on which compensation has been paid.
- 15 (4) The total amount of compensation paid.
- 16 (5) The fact that final payment has been made.

17 * * *

18 §1201.1. Controversion of compensation and medical benefits

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

- 24 (1) Prepare a "Notice of Modification, Suspension, Termination, or
- 25 Controversion of Compensation and/or Medical Benefits".
- 26 (2) Send the notice of the initial indemnity payment to the injured employee
- 27 on the same day as the first payment of compensation is made by the payor after the
- 28 payor has received notice of the claim from the employer.

1 (3) Send a copy of the notice of the initial payment of indemnity to the office
 2 within ten days from the date the original notice was sent to the injured employee or
 3 by facsimile to the injured employee's representative.

4 (4) Send the "Notice of Payment, Modification, Suspension, Termination,
 5 or Controversion of Compensation and/or Medical Benefits" to the injured employee
 6 by certified mail, to the address at which the employee is receiving payments of
 7 compensation, on or before the effective date of a modification, suspension,
 8 termination, or controversion.

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

12 B. The form of the "Notice of Payment, Modification, Suspension,
 13 Termination, or Controversion of Compensation and/or Medical Benefits" shall be
 14 promulgated by the office.

15 C. The director shall make the notice available upon request by the employee
 16 and the employee's representative.

17 D. If the injured employee is represented by an attorney, the notice shall also
 18 be provided to the employee's representative by facsimile. Proof that the notice was
 19 sent to the employee's representative by facsimile shall be prima facie evidence of
 20 compliance with Subsection A of this Section.

21 E. The provisions of this Section shall not apply to questions of medical
 22 necessity as provided by R.S. 23:1203.1.

23 F.(1) Any injured employee or his representative who disagrees with any
 24 information provided on the notice form sent by the employer or payor, shall notify
 25 the employer or payor of the basis for disagreement by returning the form to the
 26 employer or payor as provided on the form, or by letter of amicable demand, and
 27 provide any amounts of compensation he believes appropriate.

28 (2) No disputed claim shall be filed regarding any such disagreement unless
 29 the notice required by this Section has been sent to the employer or payor who
 30 initially sent the notice.

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

7 (2) If the employer or payor does not provide the benefit that the employee
8 claims is due, the employee may file a disputed claim for benefit provided it is filed
9 within the prescriptive period established under R.S. 23:1209. If the prescription
10 date of the claim occurs within the seven-day waiting period, the employee will be
11 allowed to file a disputed claim without waiting the seven business days as provided
12 in Paragraph (1) of this Subsection. However, the employer or payor shall still be
13 allowed seven business days to provide the benefit that the employee claims is due,
14 and if the employer does provide the benefit, the disputed claim will be moot
15 regarding the issues arising out of the payment, suspension, modification,
16 termination, or controversion of benefits. All other issues alleged in the disputed
17 claim will be unaffected by the payment.

18 H. The employer or the payor who wishes to have a preliminary
19 determination hearing shall request the hearing in his answer to the disputed claim
20 arising from the notice of initial payment or any subsequent modification,
21 suspension, termination, or notice of controversion. In cases where a disputed claim
22 is already pending when an issue arises from a subsequent notice of payment,
23 modification, suspension, termination, or controversion of benefits, such request
24 shall be made in an amended pleading filed within fifteen days of the expiration of
25 the seven-day period set forth in Paragraph (G)(1) of this Section.

26 I.(1) An employer or payor who has not complied with the requirements set
27 forth in Subsection A through E of this Section or has not initially accepted the claim
28 as compensable, subject to further investigation and subsequent controversion shall
29 not be entitled to a preliminary determination. An employer or payor who is not
30 entitled to a preliminary determination or who is so entitled but fails to request a

1 preliminary determination may be subject to penalties and attorney fees pursuant to
2 R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of
3 this Section.

4 (2) If disputed by the parties, upon a rule to show cause held prior to the
5 preliminary determination or any hearing held pursuant to this Section, the workers'
6 compensation judge shall determine whether the employer is in compliance.

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

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

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

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

1 K.(1) The employer or payor shall, within ten calendar days of the mailing
2 of the determination from the workers' compensation judge, do either of the
3 following:

4 (a) Accept and comply with preliminary determination of the workers'
5 compensation judge regarding the payment, suspension, modification, termination,
6 or controversion of benefits and mail a revised "Notice of Modification, Suspension,
7 Termination, or Controversion of Compensation and/or Medical Benefits" to the
8 injured employee or employee's representative, along with any payment amount
9 determined, and any arrearage due.

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

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

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

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

27 (5) Any injured employee who disagrees with the preliminary determination
28 shall notify the court within ten days of the receipt of such preliminary determination
29 of his desire to proceed to a trial on the merits of the matters that were the subject of
30 the preliminary hearing. If the employer or payor has accepted and complied with

1 the preliminary hearing determination, the employer or payor shall also be entitled
 2 to litigate all issues including those issues presented at the preliminary determination
 3 hearing.

4 (6) Any employer or payor who accepts and complies with the determination
 5 of the workers' compensation judge, and who does not request to proceed to trial on
 6 the merits of the matters that were the subject of the preliminary hearing, shall retain
 7 the right to further controvert future matters. The workers' compensation judge's
 8 determination shall not be considered an order concerning benefits due requiring
 9 modification, nor shall the determination be considered res judicata of any matters
 10 which were the subject of the preliminary hearing. The acceptance of the
 11 preliminary determination by the employer or payor shall not be considered an
 12 admission.

13 (7) In matters where the employee has filed a disputed claim and the
 14 employer or payor is not entitled to a preliminary determination, the matter shall
 15 proceed to trial on the merits.

16 (8)(a) Upon motion of either party, whether or not the employer or payor is
 17 entitled to a preliminary determination, the workers' compensation judge's ruling in
 18 a hearing shall be conducted as an expedited summary proceeding and shall be
 19 considered an order of the court and not requiring a further trial on the merits, if it
 20 concerns any of the following matters:

21 (i) The employee has sought choice of physician pursuant to R.S.
 22 23:1121(B)(1).

23 (ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).

24 (iii) The employer or payor seeks to compel the employee to sign the choice
 25 of physician form pursuant to R.S. 23:1121(B)(5).

26 (iv) The employer or payor seeks to compel the employee's submission to
 27 a medical examination pursuant to R.S. 23:1124.

28 (v) The employer seeks to require the employee to return form LWC-1025
 29 or LWC-1020.

1 (vi) The employee seeks to have a suspension of benefits for failure to
2 comply with R.S. 23:1121(B)(1) lifted.

3 (vii) The employee seeks to have a suspension of benefits for failure to
4 submit to a medical examination lifted.

5 (viii) The employee seeks to have a suspension of benefits for failure to
6 comply with R.S. 23:1208(H) lifted.

7 (ix) The employee seeks to have a reduction in benefits for failure to
8 cooperate with vocational rehabilitation lifted.

9 (b)(i) The workers' compensation judge shall set the expedited summary
10 proceeding hearing date pursuant to R.S. 23:1201.1(K)(8)(a)(iii), (iv), and (v) within
11 three days of receiving the employer's motion for the expedited hearing. The hearing
12 shall be held not less than ten nor more than thirty days after the motion has been
13 filed.

14 (ii) The workers' compensation judge shall provide the notice of the hearing
15 date to the employee or his attorney at the same time and in the same manner that the
16 notice of the hearing date is provided to the employer or payor.

17 (iii) For the purposes of this Section, the party seeking an expedited hearing
18 shall not be required to submit the dispute to mediation or go through a pretrial
19 conference before obtaining a hearing. The hearing shall be conducted as a rule to
20 show cause.

21 (c) The workers' compensation judge shall order the employee to sign the
22 choice of physician form, enforce the employee's submission to the medical
23 examination, or provide the LWC-1020 or LWC-1025 form as applicable unless the
24 employee can show good cause for his refusal.

25 (d) If the employee seeking relief pursuant to this Paragraph can show good
26 cause for his refusal, the workers' compensation judge shall order the suspension or
27 reduction in benefits lifted and the payment of any arrearage due. If the employee
28 fails to show good cause for refusal, the workers' compensation judge shall order the
29 suspension or reduction in benefits to continue until the employee complies.

1 ~~dispute arising under this Chapter~~ or payor shall be permitted to file a disputed claim
 2 against an employee, his dependent, or beneficiary only when the employer or payor
 3 alleges the employee, his dependant, or beneficiary has committed fraud as provided
 4 in R.S. 23:1208 which caused the employer or payor to pay a benefit which was not
 5 due to the employee, his dependant, or beneficiary; or when the employer or payor
 6 is an aggrieved party appealing a decision of the medical director pursuant to R.S.
 7 23:1203.1(K).

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

12 Section 2. This Act is declared to be remedial, curative, and procedural and therefore
 13 is to be applied retroactively as well as prospectively. However, should any provision of this
 14 Act be declared to apply prospectively only, all provisions of this Act shall be applied
 15 prospectively only.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____