

# ACT No. 337

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.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_