

Regular Session, 2013

HOUSE BILL NO. 606

BY REPRESENTATIVE CROMER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS COMPENSATION: Provides with respect to Louisiana Workers' Compensation Law

1 AN ACT

2 To amend and reenact R.S. 23:1020.1(B)(1), (C), and (D), 1201(F) and (H), and 1314(D)
3 and (E), relative to workers' compensation; to provide for legislative intent; to
4 provide with respect to time and place of payment; to provide for notice; to provide
5 for disputes; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1 R.S. 23:1020.1(B)(1), (C), and (D), 1201(F) and (H), and 1314(D) and (E)
8 are hereby amended and reenacted to read as follows:

9 §1020.1. Citation, purpose; legislative intent; construction

10 * * *

11 B. Purpose. The legislature declares that the purpose of this Chapter is all
12 of the following:

13 (1) To provide for the timely payment of indemnity ~~temporary and~~
14 ~~permanent~~ disability benefits to all injured workers who suffer an injury or disease
15 arising out of and in the course and scope of their employment as is provided in this
16 Chapter; while limiting and reducing the cost increases of the Louisiana Workforce
17 Commission, and to avoid the cost shifting of medical cost obligations for workers'
18 compensation benefits onto Medicare and Medicaid.

19 * * *

1 C. Legislative intent. The legislature finds all of the following:

2 (1) That the Louisiana Workers' Compensation Law is to be interpreted so
3 as to assure the delivery of benefits to an injured employee in accordance with this
4 Chapter.

5 (2) ~~To facilitate~~ Facilitation of an injured workers' return to employment at
6 a reasonable cost to the employer after having received all the medical treatment,
7 indemnity, and rehabilitation due to him shall be the goal.

8 (3) That benefits are to be delivered to an injured employee in a
9 constitutional manner that affords him unburdened access to courts.

10 (4) Due process shall be extended to the injured employee by providing a
11 meaningful hearing that fully employs the notions of fairness and justice.

12 (5) All persons working in the state of Louisiana shall be protected from
13 unwarranted, unnecessary litigation initiated by the workers' compensation insurance
14 carriers and employers seeking unconstitutional outcomes such as advisory opinions
15 from the courts.

16 (6) Litigation shall not be filed for the purpose of intimidation, harassment,
17 or other improper purpose, which may present an implicit threat that would dissuade
18 the employee from reporting a work-related accident.

19 (7) That an injured employee's right to a meaningful judicial process shall
20 not be abrogated by the inequity of the workers' compensation insurance carriers' or
21 employers' vastly superior financial position.

22 (8) That all persons shall be treated equally under the law and that there is
23 no disparate impact upon the members of protected classes.

24 (9) Immediate and severe cost-shifting increases that occur in the state's
25 Medicaid fund and which jeopardize federal healthcare funds should be avoided.

26 (10) This Act shall be retroactively applied to provide an immediate cure to
27 the inequities that are occurring or potentially could occur under previous law.

28 D. Construction. The Louisiana Workers' Compensation Law shall be
29 construed as follows:

1 (1) The provisions of this Chapter are based on the ~~mutual renunciation of~~
2 ~~legal rights and defenses by employers and employees alike; therefore, it is the~~
3 ~~specific intent of the legislature that workers' compensation cases shall be decided~~
4 ~~on their merits. legislatively enacted and jurisprudentially recognized quid pro quo~~
5 ~~that an employer will be provided immunity from tort damages, and in exchange, the~~
6 ~~injured employee will not be allowed to recover full legal damages from a work-~~
7 ~~related accident. Therefore, it is the specific intent of the legislature that workers'~~
8 ~~compensation cases shall be decided on the merits with full and due consideration~~
9 ~~of the disproportionate economic disadvantage an injured worker may face when~~
10 ~~attempting to litigate against his employer or a workers' compensation insurance~~
11 ~~company.~~

12 (2) Disputes concerning the facts in workers' compensation cases shall ~~not~~
13 be given a broad, liberal construction in favor of ~~the injured worker. either~~
14 ~~employees or employers; the laws pertaining to workers' compensation shall be~~
15 ~~construed in accordance with the basic principles of statutory construction and not~~
16 ~~in favor of either employer or employee. The laws pertaining to workers'~~
17 ~~compensation shall be construed in accordance with the basic principles of statutory~~
18 ~~construction but viewed in the light most favorable to the injured worker.~~

19 (3) ~~According to Article III, Section 1 of the Constitution of Louisiana, the~~
20 ~~legislative powers of the state are vested solely in the legislature; therefore, when the~~
21 ~~workers' compensation statutes of this state are to be amended, the legislature~~
22 ~~acknowledges its responsibility to do so. If the workers' compensation statutes are~~
23 ~~to be liberalized, broadened, or narrowed, such actions shall be the exclusive~~
24 ~~purview of the legislature.~~

* * *

26 §1201. Time and place of payment; failure to pay timely; failure to authorize;
27 penalties and attorney fees

* * *

1 F. ~~Except as otherwise provided in this Chapter, failure~~ Failure to provide
2 payment in accordance with this Section or failure to consent to the employee's
3 request to select a treating physician or change physicians when such consent is
4 required by R.S. 23:1121 shall result in the assessment of a penalty in an amount up
5 to the greater of twelve percent of any unpaid compensation or medical benefits, or
6 fifty dollars per calendar day for each day in which any and all compensation or
7 medical benefits remain unpaid or such consent is withheld, together with reasonable
8 attorney fees for each disputed claim; however, the fifty dollars per calendar day
9 penalty shall not exceed a maximum of two thousand dollars in the aggregate for any
10 claim. The maximum amount of penalties which may be imposed at a hearing on the
11 merits regardless of the number of penalties which might be imposed under this
12 Section is eight thousand dollars. An award of penalties and attorney fees at any
13 hearing on the merits shall be res judicata as to any and all claims for which penalties
14 may be imposed under this Section which precedes the date of the hearing. Penalties
15 shall be assessed in the following manner:

* * *

17 H.(1) Upon making the first payment of compensation and upon
18 modification or suspension of payment for any cause, the employer or insurer shall
19 immediately send a notice to the office, in the manner prescribed by the rules of the
20 director, that payment of compensation has begun or has been suspended, as the case
21 may be. After February 1, 2013, ~~a payor~~ the employer or his workers' compensation
22 insurance carrier, which shall mean that entity which is responsible by law or
23 contract for the payment of benefits or medical expenses incurred by the claimant as
24 a result of an injury covered by this Chapter, shall do all of the following:

25 (a) Prepare a notice of payment. The form for the notice of payment shall
26 be promulgated by the office pursuant to the Administrative Procedure Act.

27 (b) Send the notice of payment to the injured employee, or the employee's
28 representative, with the first payment of compensation; and include all
29 documentation relied upon to determine the amount of payment.

1 (c) ~~Send the notice of payment~~ If the employer or his workers' compensation
2 insurance carrier seeks to modify or suspend indemnity benefits, he shall send the
3 notice of modification or suspension by certified mail to the injured employee, or the
4 employee's representative, ~~within~~ ten days ~~of a~~ before any suspension or
5 modification to compensation for any cause or ~~within~~ ten days ~~of~~ before the
6 suspension or modification of the supplemental earnings benefit and include all
7 documentation relied upon in order to determine the amount of modification or
8 reason for suspension of payment.

9 (d) Send a copy of the notice of payment to the office within ten days from
10 the date that the original notice of payment was sent to the injured employee or the
11 employee's representative.

12 (2)(a)(I) The injured employee or the employee's representative who
13 disagrees with any information provided on the notice of payment shall, in writing,
14 notify the ~~payor~~ employer or his workers' compensation insurance carrier of the basis
15 for disagreement and provide the amounts believed appropriate. Any and all judicial
16 interest awarded shall be calculated from the date of the written communication of
17 disagreement of the employee or his representative.

18 (ii) If the injured employee or his representative receives a modification or
19 suspension of benefits and disagrees with the modification or suspension of
20 indemnity benefits, he shall notify, in writing, the employer or his workers'
21 compensation insurance carrier of the basis of the disagreement with the proposed
22 modification or suspension of indemnity benefits.

23 (b) The ~~payor~~ employer or his workers' compensation insurance carrier,
24 within five business days of receipt of the notice of disagreement, shall do one of the
25 following:

26 (I) Send a revised notice of payment along with a revised payment in
27 accordance therewith to the injured employee or the employee's representative along
28 with indemnity payment arrearage due.

1 (ii) If the ~~payor~~ employer or his workers' compensation insurance carrier
2 believes that the amount determined in the original notice of payment was correct,
3 then the ~~payor shall file a request for preliminary determination, on a form to be~~
4 ~~promulgated by the office, and shall provide a copy to the injured employee or the~~
5 ~~employee's representative~~ employer or his workers' compensation insurance carrier
6 will provide, in writing, by certified mail, to the employee or his representative,
7 notice of refusal to alter the payment amount or the amount of the modification or
8 suspension of indemnity benefits.

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

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

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

1 ~~notice of payment as required by this Subsection. A payor who provides the~~
2 ~~compensation amounts due as recommended by the workers' compensation judge~~
3 ~~shall not be subject to any penalty and attorney fees regarding such calculation of the~~
4 ~~compensation due and payment provided with the revised notice of payment.~~

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

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

13 (a) The name of the injured employee or any other person to whom
14 compensation has been paid, or both.

15 (b) The date of injury or death.

16 (c) The dates on which compensation has been paid.

17 (d) The total amount of compensation paid.

18 (e) The fact that final payment has been made.

19 * * *

20 §1314. Necessary allegations; dismissal of premature petition; dispute of benefits

21 * * *

22 ~~D. Disputes over medical treatment pursuant to the medical treatment~~
23 ~~schedule shall be premature unless a decision of the medical director has been~~
24 ~~obtained in accordance with R.S. 23:1203.1(J).~~

25 E. Notwithstanding any other provision of this Section, the employer shall
26 be permitted to file a disputed claim to controvert benefits or concerning any other
27 dispute arising under this Chapter. In disputed claims, directly caused by the
28 fraudulent acts of an employee, in which the employer or his workers' compensation
29 insurance carrier alleges that he has paid indemnity or medical benefits which were

1 not due, the employer or his workers' compensation insurance carrier shall
 2 specifically allege the benefit paid which was not due and the monetary amount of
 3 the benefit paid which was not due.

4 Section 2. This Act is declared to be remedial, curative, and procedural and
 5 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)]

Cromer

HB No. 606

Abstract: Amends the Workers' Compensation Law.

Present law creates the Workers' Compensation Law.

Present law provides for the timely payment of temporary permanent disability benefits to all injured workers who suffer an injury or disease arising out of the course and scope of their employment.

Proposed law changes "temporary and permanent" disability benefits to indemnity benefits.

Proposed law further provides that a timely payment shall be made to the injured employee while limiting and reducing the cost increases of LWC, and to avoid the cost shifting of medical cost obligations for workers' compensation benefits onto Medicare and Medicaid.

Present law provides that the Louisiana Workers' Compensation Law is to be interpreted as to assure the delivery of benefits to an injured employee and to facilitate the injured employee's return to work at a reasonable cost to the employer.

Proposed law deletes "at a reasonable cost to the employer" and adds that the purpose of the Louisiana Workers' Compensation Law is to facilitate the injured employee's return to employment after he has received all of the medical treatment and rehabilitation due him.

Proposed law further provides that the Louisiana Workers' Compensation Law shall assure that due process is extended to the injured employee through benefits that are delivered in a constitutional manner that affords him unburdened access to the courts.

Proposed law further seeks to assure that litigation is not filed for intimidation or harassment, and that the injured employee has equal access to and treatment in the judicial process.

Proposed law provides for retroactive application.

Present law provides for the mutual renunciation of legal rights and defenses, providing that neither party shall have the advantage.

Proposed law deletes present law and provides that because the employer has immunity from tort damages, and because workers' compensation is the only legal remedy to recover for injured workers, that all workers' compensation cases shall be decided on the merits with full

and due consideration of the disproportional economic disadvantage an injured employee may face.

Present law provides that disputes concerning the facts in workers' compensation cases shall not be examined in favor of either the employer or the injured employee.

Proposed law deletes present law, and instead provides that disputes in workers' compensation cases shall be given a broad, liberal construction in favor of the injured employee.

Proposed law deletes the clause "except as otherwise provided in this Chapter" to provide that with no exceptions, failure to provide payment in accordance with present law or failure to consent to the injured employee's request to select a physician when required to do so, shall result in penalties and attorney fees.

Proposed law removes the term "payor" from present law and uses "the employer or his workers' compensation insurance carrier".

Present law requires that notice of payment be sent to the injured employee with the first payment of compensation.

Proposed law further requires that all documentation that was relied upon to make the final determination of payment be included with the notice of payment to the injured employee.

Proposed law requires an employer to send the injured employee a notice of modification by certified mail any time he seeks to modify or suspend indemnity benefits.

Present law requires that notice be sent within 10 days of a suspension.

Proposed law changes present law to require the notice be sent 10 days before any suspension or modification and that with the notice, the employer include all documentation that was relied upon for the determination of modification or suspension of payment.

Proposed law provides that interest shall be calculated from the date of the written communication of disagreement of the employee.

Present law provides that if the payor believes the determined amount is correct, he shall file a request for preliminary determination and provide a copy to the injured employee.

Proposed law deletes present law and provides that if the employer believes the determination is correct, he shall provide a notice of refusal to alter the payment amount, to the injured employee.

Present law provides the procedure for the preliminary determination, which proposed law deletes. Present law provides that the preliminary determination shall be performed by the director's designee, a workers' compensation judge, and shall be within 15 days of the filing of a request.

Present law further provides that the injured employee, the payor, and the employer shall participate in a preliminary determination by phone, during which the workers' compensation judge may require any of the parties to produce relevant records necessary to a determination. The workers' compensation judge shall provide a recommendation within 30 days.

Proposed law deletes present law.

Proposed law requires the payor to either mail a revised notice of payment with the recommended amount to the payor, or notify the injured employee in writing that the payor

does not accept the recommendation, within 10 days of the mailing of the recommendation from the workers' compensation judge.

Proposed law deletes present law.

Present law provides that no disputed claim over the amount of compensation shall be filed until the provisions of present law have been exhausted, unless the disputed claim is in regard to a payor's failure to provide a notice of payment.

Proposed law deletes present law.

Present law provides that if a payor provides the compensation amounts due as recommended by the workers' compensation judge, he shall not be subject to any penalty and attorney fees regarding such calculation of the compensation due, and payment provided with the revised notice for payment.

Proposed law deletes present law.

Present law further provides that a payor who provides the compensation amounts recommended by the workers' compensation judge, but disagrees with the preliminary recommendation, he shall file a disputed claim for compensation within 15 days of mailing the revised notice of payment.

Proposed law deletes present law and provides that within fourteen days after the final payment of compensation has been made, the employer shall send notice to the office which states the name of the injured employee, the date of injury, the dates on which compensation has been paid, the total amount of compensation paid, and the fact that final payment has been made.

Present law provides that disputes over medical treatment, pursuant to the medical treatment guidelines, shall be premature until the medical director has made a decision.

Proposed law deletes present law.

Present law provides that the employer shall be permitted to file a disputed claim to controvert benefits or concerning any other dispute.

Proposed law provides that in those disputed claims directly caused by the fraudulent acts of an employee, the employer shall specifically allege the benefit paid which was not due and the monetary amount of the benefit paid which was not due.

(Amends R.S. 23:1020.1(B)(1), (C), and (D), 1201(F) and (H), and 1314(D) and (E))