### 2024 Regular Session

### HOUSE BILL NO. 703

# BY REPRESENTATIVES MELERINE, BEAULLIEU, HORTON, MIKE JOHNSON, AND MCFARLAND

# WORKERS COMPENSATION: Provides relative to controversion of benefits, preliminary determination hearings, disputed claims, and penalties and attorney fees

1	AN ACT
2	To amend and reenact R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and
3	1314(E)(1), relative to workers' compensation; to provide for penalties and attorney
4	fees under certain circumstances; to provide for payment of workers' compensation
5	claims; to provide for the controversion of compensation and medical benefits; to
6	provide for disputed claims; to require certain notice and delivery requirements; to
7	provide exceptions; and to provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1)
10	are hereby amended and reenacted to read as follows:
11	§1201. Time and place of payment; failure to pay timely; failure to authorize;
12	penalties and attorney fees
13	* * *
14	F.(1) Except as otherwise provided in this Chapter, failure to provide
15	payment in accordance with this Section or failure to consent to the employee's
16	request to select a treating physician or change physicians when such consent is
17	required by R.S. 23:1121 shall result in the assessment of a penalty in an amount up
18	to the greater of twelve percent of any unpaid compensation or medical benefits, or
19	fifty dollars per calendar day for each day in which any and all compensation or

### Page 1 of 10

1	medical benefits remain unpaid or such consent is withheld, together with reasonable
2	attorney fees for each disputed claim, however, the fifty dollars per calendar day
3	penalty shall not exceed a maximum of two thousand dollars in the aggregate for any
4	claim. The maximum amount of penalties which may be imposed at a hearing on the
5	merits regardless of the number of penalties which might may be imposed under this
6	Section is eight thousand dollars. Attorney fees awarded pursuant to this Section
7	shall be based on a sworn affidavit from the attorney with time records detailing the
8	work performed, the date on which it was performed, and the time spent on each
9	activity to the tenth of an hour, and shall be credited against any fees due pursuant
10	to R.S. 23:1141. An award of penalties and attorney fees at any hearing on the
11	merits shall be res judicata as to any and all claims for which penalties may be
12	imposed under this Section which precedes the date of the hearing. Penalties shall
13	be assessed in the following manner:
14	(1) (a) Such penalty and attorney fees shall be assessed against either the
15	employer or the insurer, depending upon fault. No workers' compensation insurance
16	policy shall provide that these sums shall be paid by the insurer if the workers'
17	compensation judge determines that the penalty and attorney fees are to be paid by
18	the employer rather than the insurer.
19	(b) Except as provided in Subparagraph (c) of this Subsection, any additional
20	compensation paid by the employer or insurer pursuant to this Section shall be paid
21	directly to the employee.
22	(c) In the event that the healthcare provider prevails on a claim for payment
23	of his fee, penalties as provided in this Section and reasonable attorney fees based
24	upon actual hours worked may be awarded and paid directly to the healthcare
25	provider. This Subsection shall not be construed to provide for recovery of more
26	than one penalty or attorney fee.
27	(d) No amount paid as a penalty or attorney fee in accordance with this
28	Subsection shall be included in any formula utilized to establish premium rates for
29	workers' compensation insurance.

1	(2)(a) This Subsection shall not apply if the claim is reasonably controverted	
2	or if such nonpayment results from conditions over which the employer or insurer	
3	had no control.	
4	(b) For purposes of this Section, "reasonably controverted" means that the	
5	employer or the employer's representative acted in good faith and articulated an	
6	objective reason for denying the claim, even though the facts or law may be disputed	
7	and benefits are ultimately found to be owed. The burden of proof shall be on the	
8	party seeking attorney fees to prove by clear and convincing evidence that the claim	
9	is not reasonably controverted.	
10	(3) This Subsection shall not apply if the employee has failed to submit	
11	amicable demand for the benefit in dispute to the employer or insurer, in writing with	
12	sufficient particularity and proof thereof, or if following receipt of the employee's	
13	amicable demand, the employer or insurer pays the disputed benefit as required by	
14	this Chapter within ten business days in the absence of clear and convincing	
15	evidence that the employer or insurer acted arbitrarily.	
16	(4) This Subsection shall not apply if the employer corrects any failure to	
17	provide payment or any failure to consent to the employee's request to select a	
18	treating physician or change physicians, and consents to treatment or issues proper	
19	payment, together with any interest owed thereon, prior to being notified of the	
20	failure by the employee, a healthcare provider, or his representative.	
21	(3) Except as provided in Paragraph (4) of this Subsection, any additional	
22	compensation paid by the employer or insurer pursuant to this Section shall be paid	
23	directly to the employee.	
24	(4) In the event that the health care provider prevails on a claim for payment	
25	of his fee, penalties as provided in this Section and reasonable attorney fees based	
26	upon actual hours worked may be awarded and paid directly to the health care	
27	provider. This Subsection shall not be construed to provide for recovery of more	
28	than one penalty or attorney fee.	

1	(5) No amount paid as a penalty or attorney fee under this Subsection shall
2	be included in any formula utilized to establish premium rates for workers'
3	compensation insurance.
4	* * *
5	§1201.1. Controversion of compensation and medical benefits
6	A. Upon the first payment of compensation indemnity benefits or upon any
7	modification, suspension, termination, or controversion of compensation or medical
8	benefits for any reason, including but not limited to issues of medical causation,
9	compensability of the claim, or issues arising out of R.S. 23:1121, 1124, 1208, and
10	1226, the employer or payor who has been notified of the claim, shall do all of the
11	following:
12	(1) Prepare a "Notice of Modification, Suspension, Termination, or
13	Controversion of Compensation and/or or Medical Benefits".
14	(2) Send the notice of the initial indemnity payment to the injured employee
15	on the same day as the first payment of compensation is made by the payor any time
16	within ten business days of the first payment of indemnity benefits by either certified
17	mail, email, facsimile, hand-delivery, or any other reasonable commercial carrier
18	express delivery after the payor has received notice of the claim from the employer.
19	(3) Send a copy of the notice of the initial payment of indemnity to the office
20	any time within ten business days of the first payment of indemnity benefits by either
21	certified mail, email, facsimile, hand-delivery, or any other reasonable commercial
22	carrier express delivery from the date the original notice was sent to the injured
23	employee or by facsimile to the injured employee's representative.
24	(4) Send the "Notice of Payment, Modification, Suspension, Termination,
25	or Controversion of Compensation and/or or Medical Benefits" to the injured
26	employee by certified mail any time within ten business days to the employee by
27	either certified mail, email, facsimile, hand-delivery, or any other reasonable
28	commercial carrier express delivery, to the address at which the employee is

### Page 4 of 10

1	receiving payments of compensation, on or before within ten business days of the
2	effective date of a modification, suspension, termination, or controversion.
3	(5) Send a copy of the "Notice of Payment, Modification, Suspension,
4	Termination, or Controversion of Compensation and/or or Medical Benefits" to the
5	office on the same business day as sent to the employee or to his representative any
6	time within ten business days of the effective date of a modification, suspension,
7	termination, or controversion by either certified mail, email, facsimile, hand-
8	delivery, or any other reasonable commercial carrier express delivery.
9	* * *
10	D. If the injured employee is represented by an attorney, the notice shall also
11	be provided to the employee's representative by facsimile any time within ten
12	business days of the effective date of modification, suspension, termination or
13	controversion by either certified mail, email, facsimile, hand-delivery, or any other
14	reasonable commercial carrier express delivery. Proof that the notice was sent to the
15	employee's representative by facsimile either certified mail, email, facsimile, hand-
16	delivery, or any other reasonable commercial carrier express delivery shall be prima
17	facie evidence of compliance with Subsection A of this Section.
18	* * *
19	F.(1) Any injured employee or his representative who disagrees with any
20	information provided on the notice form sent by the employer or payor, shall notify
21	the employer or payor of the basis for disagreement by returning the form to the
22	employer or payor as provided on the form, or by letter of amicable demand within
23	ten business days from first receipt of the form referenced in Subsection B of this
24	Section, and provide any amounts of compensation or medical benefits he believes
25	appropriate.
26	(2) If no first payment of compensation has been made on the claim, any
27	injured employee or his representative who contends that entitlement to
28	compensation or medical benefits exists shall notify the employer or payor by letter

	HB NO. 703
1	of amicable demand specifying the basis for such contention of entitlement to
2	compensation or medical benefits.
3	(2) (3) No disputed claim shall be filed regarding any such disagreement or
4	entitlement to compensation or medical benefits unless the notice required by this
5	Section has been sent to the employer or payor <u>either</u> who initially sent the notice or
6	was provided a letter of amicable demand pursuant to Paragraph (2) of this
7	Subsection.
8	G.(1) If the employer or the payor provides the benefit that the employee
9	claims is due, including any arrearage, on the returned form or letter of amicable
10	demand within seven ten business days of receipt of the employee's demand, the
11	employer or payor shall not be subject to any claim for any penalties or attorney fees
12	arising from the disputed payment, modification, suspension, termination, or
13	controversion.
14	* * *
15	I.(1) An employer or payor who has not complied with the requirements set
16	forth in Subsection A through E of this Section or has not initially accepted the claim
17	as compensable, subject to further investigation and subsequent controversion shall
18	not be entitled to a preliminary determination. An employer or payor who is not
19	entitled to a preliminary determination or who is so entitled but fails to request a
20	preliminary determination may be subject to penalties and attorney fees pursuant to
21	R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of
22	this Section. An employer or payor shall be entitled to a preliminary determination
23	regarding the notice of the initial indemnity payment if the employer or payor has
24	complied with the requirements of Paragraphs (A)(1) through (3) and Subsection D
25	of this Section.
26	(2) An employer or payor shall be entitled to a preliminary determination
27	regarding any notice of modification, suspension, termination, or controversion if the
28	employer or payor has complied with the requirements of Paragraphs (A)(1), (4), and
29	(5) and Subsection D of this Section, regardless of whether the employer or payor

## Page 6 of 10

1	was entitled to a preliminary determination pursuant to Paragraph (1) or (3) of this			
2	Subsection.			
3	(3) An employer or payor shall be entitled to a preliminary determination			
4	regarding any amicable demand provided pursuant to Paragraph (F)(2) of this			
5	Section, regardless of whether the employer or payor was entitled to a preliminary			
6	determination pursuant to Paragraph (1) or (2).			
7	(4) An employer or payor who is not entitled to a preliminary determination			
8	or who is so entitled but fails to request a preliminary determination may be subject			
9	to penalties and attorney fees pursuant to R.S. 23:1201 at a trial on the merits or			
10	hearing held pursuant to Paragraph (K)(8) of this Section.			
11	(2) (5) Any dispute by the employee or his representative to the request for			
12	a preliminary determination hearing by the employer or payor shall be filed by a			
13	formal motion with the court within ten business days of the employer's or payor's			
14	request for a preliminary determination hearing pursuant to this Section. Failure to			
15	file a motion disputing the request for a preliminary determination as required by this			
16	Paragraph will bar any objection to the right of the employer or payor to a			
17	preliminary determination hearing. If disputed by the parties, upon a rule to show			
18	cause held prior to the preliminary determination or any hearing held pursuant to this			
19	Section, the workers' compensation judge shall determine whether the employer is			
20	in compliance.			
21	* * *			
22	§1314. Necessary allegations; dismissal of premature petition; dispute of benefits			
23	* * *			
24	E.(1) Notwithstanding any other provision of this Section, the employer or			
25	payor shall be permitted to file a disputed claim against an employee, his dependent,			
26	or beneficiary only when the employer or payor alleges the employee, his dependent,			
27	or beneficiary has committed fraud as provided in R.S. 23:1208 which caused the			
28	employer or payor to pay a benefit which was not due to the employee, his			

### Page 7 of 10

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- 1 dependent, or beneficiary; or when the employer or payor is an aggrieved party
- 2 appealing a decision of the medical director pursuant to R.S. 23:1203.1(K).

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### 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)]

HB 703 Engrossed	2024 Regular Session	Melerine
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Abstract: Provides relative to controversion of benefits, preliminary determination hearings, disputed claims, and penalties and attorney fees.

<u>Present law</u> provides that failure to provide payment or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required shall result in the assessment of a penalty in an amount up to the greater of 12% of any unpaid compensation or medical benefits, or \$50 per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, in addition to attorney fees for each disputed claim.

<u>Proposed law</u> removes provisions of <u>present law</u> that require payment for any and all compensation or medical benefits that remain unpaid or when consent is withheld.

Proposed law otherwise retains present law.

<u>Present law</u> allows a maximum penalty amount of \$8,000 to be imposed at a hearing on the merits.

Proposed law retains present law.

<u>Proposed law</u> provides that attorney fees awarded shall be based on a sworn affidavit from the attorney with time records detailing the work performed, the date on which it was performed, and the time spent on each activity to the 10<sup>th</sup> of an hour, and shall be credited against any fees due pursuant to present law (R.S. 23:1141).

<u>Present law</u> requires any additional compensation paid by the employee or insurer to be paid directly to the employee.

Proposed law repeals present law.

<u>Present law</u> provides that in the event that the healthcare provider prevails on a claim for payment of his fee, penalties and reasonable attorney fees based upon actual hours worked may be awarded and paid directly to the healthcare provider. <u>Present law</u> further provides that the provisions of <u>present law</u> shall not be construed to provide for recovery of more than one penalty or attorney fee.

Proposed law repeals present law.

<u>Present law</u> prohibits a penalty or attorney fee from being included in any formula utilized to establish premium rates for workers' compensation insurance.

Proposed law repeals present law.

#### Page 8 of 10

<u>Proposed law</u> provides that if the employee has failed to submit amicable demand for the benefit in dispute to the employer or insurer, in writing with sufficient particularity and proof, or if following receipt of the employee's amicable demand, the employer or insurer pays the disputed benefit within 10 business days, in the absence of clear and convincing evidence that the employer or insurer acted arbitrarily.

<u>Proposed law</u> defines reasonably controverted and provides that the burden of proof shall be on the party seeking attorney fees to prove by clear and convincing evidence that the claim is not reasonably controverted.

<u>Proposed law</u> provides that <u>proposed law</u> (R.S. 23:1201(F)) does not apply if the employer corrects any failure to provide payment or any failure to consent to the employee's request to select a treating physician or change physicians, and consents to treatment or issues proper payment, together with any interest owed thereon, prior to being notified of the failure by the employee, a healthcare provider, or his representative.

<u>Present law</u> provides upon the first payment of compensation or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issue of medical causation, compensability of the claim, or issues arising out of provisions of <u>present law</u>, shall do all of the following:

- (1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits.
- (2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment is made after the payor has received notice of the claim from the employer.
- (3) Send a copy of the notice of the initial payment of indemnity to the office from when the original notice was sent to the injured employee or to his representative.
- (4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the injured employee, to the employee's address where he receives payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.
- (5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation or Medical Benefits" to the office on the same business day as sent to the employee or his representative.

<u>Proposed law</u> changes provisions of <u>present law</u> from requiring the first payment of compensation to the first payment of indemnity benefits. <u>Proposed law</u> also adds certain delivery requirements that must be made within 10 business days and otherwise retains <u>present law</u>.

<u>Present law</u> provides that if the employer or payor provides the benefit that the employee claim is due, including any arrearage, on the returned form or letter of amicable demand within 7 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 controversion.

<u>Proposed law</u> changes the requirement of submission <u>from</u> 7 business days to 10 business days. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> allows the employer or payor to file a disputed claim against an employee, his dependent, or beneficiary only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary.

#### Page 9 of 10

<u>Proposed law</u> removes provisions of <u>present law</u> that allows the employer or payor to file a disputed claim only when the employer or payor has alleged the employee, his dependent, or beneficiary has committed fraud that caused payment of a benefit that was not due. <u>Proposed law</u> otherwise retains <u>present law</u>.

(Amends R.S. 23:1201(F) and 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1))

### Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Labor and Industrial</u> <u>Relations</u> to the <u>original</u> bill:

- 1. Revise provisions of <u>present law</u> (R.S. 23:1201(F)(1)) and <u>proposed law</u> (R.S. 23:1201(F)(1)) and add a provision regarding requirements of attorney fees awarded under <u>present law</u> (R.S. 23:1201(F)(1)).
- 2. Provide an exception for when an employer corrects a failure to provide payment or a failure to consent to an employee's request to select a treating physician.
- 3. Remove language in <u>proposed law</u> that allows sending the notice required in <u>present law</u> (R.S. 23:1201.1) by regular mail.
- 4. Define "reasonably controverted".
- 5. Provide a burden of proof for the party seeking attorney fees.
- 6. Make technical changes.