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## DIGEST

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Cromer

HB No. 728

**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 three 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, and changes references to "employer or insurer" to "employer or payor".

Proposed law requires the payor to send notice to the office, the employee, and the employee's representative upon making the first payment of compensation, and upon any payment, 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 first 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 seven 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 are 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 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 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.

Proposed law provides that when an employee has filed a disputed claim and the employer or payor is not entitled to a preliminary determination, then the matter shall proceed to a trial on the merits.

Proposed law provides that the workers' compensation judge's ruling in a hearing shall be conducted as an expedited summary proceeding and shall be considered an order of the court in certain matters outlined in proposed law.

Proposed law provides that if an employee can show good cause for his refusal, the judge shall order the suspension or reduction in benefits lifted and the payment of any arrearage due.

Proposed law provides that if the employee fails to show good cause for refusal, the judge shall order the suspension or reduction in benefits to continue until the employee complies.

Proposed law provides that an employer or payor who is entitled to a preliminary determination and who complies with an order of the court issued pursuant to a hearing within 10 days shall not be subject to any penalty or attorney fees arising out of the original notice which was the subject of the hearing.

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 three 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 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 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 dependent, or his beneficiary when the employer or payor alleges the employee has committed fraud.

Proposed law shall be remedial, curative, and procedural and shall be applied retroactively unless part of the Act is declared to be prospective only, then the whole Act shall be applied prospectively.

(Amends R.S. 23:1121(B)(1) and (5), 1124, 1201(H), 1208(F), (G), and (H), 1226(B)(3), 1310.8(B) and 1314(E); Adds R.S. 23:1021(13) and 1201.1)

#### Summary of Amendments Adopted by House

##### House Floor Amendments to the engrossed bill.

1. Makes technical changes.

2. Provides that when an employee has filed a disputed claim and the employer or payor is not entitled to a preliminary determination, then the matter shall proceed to a trial on the merits.
3. Provides for expedited hearings and for procedure for disputes and time frames for the expedited hearing.
4. Changes references from "insurer" to "payor".
5. Allows the employer or payor to file a disputed claim against an employee, his dependent, or beneficiary in cases of fraud.
6. Provides that if any provision of the Act is declared to be applied prospectively only, then the whole Act shall be applied prospectively.