FOR OFFICE USE ONLY

HOUSE FLOOR AMENDMENTS

Amendments proposed by Representative Broadwater to Engrossed House Bill No. 728 by Representative Cromer

1 AMENDMENT NO. 1

- 2 On page 1, line 2, after "1124," delete the remainder of the line and insert in lieu thereof 3 "1201(H), 1208(F), (G), and (H), 1226(B)(3), 1310.8(B),"
- 4 AMENDMENT NO. 2
- 5 On page 1, line 11, after "1124," delete the remainder of the line and insert in lieu thereof 6 "1201(H), 1208(F), (G), and (H), 1226(B)(3), 1310.8(B), and 1314(E)"
- 7 AMENDMENT NO. 3
- 8 On page 2, line 5, after "proceeding" insert "pursuant to R.S. 23:1201.1 (K)(8)"
- 9 AMENDMENT NO. 4
- 10 On page 2, on lines 13 and 14, delete "<u>medical examination</u>" and insert in lieu thereof 11 "<u>choice of physician</u>"

12 AMENDMENT NO. 5

- On page 2, on lines 18 and 19, delete "Any claims for penalties and attorney fees alleged by
 the employee will be subject to the provisions of R.S. 23:1201.1."
- 15 AMENDMENT NO. 6
- 16 On page 2, lines 26, 27, and 28, delete "his insurer shall be entitled to seek an expedited 17 hearing to be held within ten days, and upon order of the court," and insert in lieu thereof 18 "payor"
- 19 AMENDMENT NO. 7
- On page 3, line 1, delete "<u>Any suspension</u>" and insert in lieu thereof "<u>Suspension of medical</u>
 <u>benefits</u>"
- 22 AMENDMENT NO. 8
- 23 On page 3, line 2, delete "<u>R.S. 23:1201.1.</u>" and insert in lieu thereof "<u>R.S. 23:1201.1(A)(4)</u>
- and (5). When the employee has filed a disputed claim, the employer or payor may move
 for an order to compel the employee to return the form."
- 26 AMENDMENT NO. 9
- On page 3, line 8, delete "shall" and insert "<u>may</u>" and after "suspended" and before "until" insert "<u>by the employer or payor</u>"

1	AMENDMENT NO. 10
2	On page 3, line 9, after "place." and before "The" insert the following:
3	"Such suspension of benefits by the employer or payor shall be made in accordance
4	with the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed
5	a disputed claim, the employer or payor may move for an order to compel the
6	employee to appear for an examination."
7	AMENDMENT NO. 11
8	On page 3, after line 27, insert the following:
9	"\$1201. Time and place of payment; failure to pay timely; failure to authorize;
10	penalties and attorney fees
11	* * *
12	H.(1) Upon making the first payment of compensation and upon
13	modification or suspension of payment for any cause, the employer or insurer shall
14	immediately send a notice to the office, in the manner prescribed by the rules of the
15	director, that payment of compensation has begun or has been suspended, as the case
16	may be. After February 1, 2013, a payor, which shall mean that entity which is
17	responsible by law or contract for the payment of benefits or medical expenses
18	incurred by the claimant as a result of an injury covered by this Chapter, shall do all
19	of the following:
20	(a) Prepare a notice of payment. The form for the notice of payment shall
21	be promulgated by the office pursuant to the Administrative Procedure Act.
22	(b) Send the notice of payment to the injured employee, or the employee's
23	representative, with the first payment of compensation.
24	(c) Send the notice of payment to the injured employee, or the employee's
25	representative, within ten days of a suspension or modification to compensation for
26	any cause or within ten days of the suspension or modification of the supplemental
27	earnings benefit.
28	(d) Send a copy of the notice of payment to the office within ten days from
29	the date that the original notice of payment was sent to the injured employee or the
30	employee's representative.
31	(2)(a) The injured employee or the employee's representative who disagrees
32	with any information provided on the notice of payment shall, in writing, notify the
33	payor of the basis for disagreement and provide the amounts believed appropriate.
34	(b) The payor, within five business days of receipt of the notice of
35	disagreement, shall do one of the following:
36	(i) Send a revised notice of payment along with a revised payment in
37	accordance therewith to the injured employee or the employee's representative.
38	(ii) If the payor believes that the amount determined in the original notice
39	of payment was correct, then the payor shall file a request for preliminary
40	determination, on a form to be promulgated by the office, and shall provide a copy
41	to the injured employee or the employee's representative.
42	(c) The preliminary determination shall be performed by the director's
43	designee, who shall be a workers' compensation judge specifically assigned to handle
44	preliminary determinations. Such preliminary determination hearing shall occur
45	within fifteen days of the filing of a request.
46	(d) The injured employee, the employee's representative, the payor and the
47	employer, which includes the direct employer of a statutory employee pursuant to
48	R.S. 23:1061, shall participate in a preliminary determination hearing by phone. The
49	workers' compensation judge may require any of these parties to produce relevant
50	records necessary for the determination of compensation provided for in the notice
51	of payment. No later than thirty days from the filing of the request for a preliminary
52	determination, the workers' compensation judge shall provide, in writing, a
53	recommended amount of compensation.
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1 (e) The payor shall, within ten calendar days of the mailing of the 2 recommendation from the workers' compensation judge, either mail to the injured 3 employee or the employee's representative a revised notice of payment with the 4 recommended amount if such recommended amount is different from that which was 5 previously provided on the initial notice of payment, or notify the injured worker or the employee's representative in writing that the payor does not accept the 6 7 recommendation. No disputed claim for compensation regarding the amount of 8 compensation due shall be filed until the provisions of this Subsection have been 9 exhausted unless such a disputed claim is in regard to a payor's failure to provide a 10 notice of payment as required by this Subsection. A payor who provides the 11 compensation amounts due as recommended by the workers' compensation judge shall not be subject to any penalty and attorney fees regarding such calculation of the 12 13 compensation due and payment provided with the revised notice of payment. 14

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

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

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

- (2) The date of injury or death.
- (3) The dates on which compensation has been paid.
 - (4) The total amount of compensation paid.
 - (5) The fact that final payment has been made. *
- 29 <u>AMENDMENT NO. 12</u>

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30 On page 4, delete lines 2 through 29, and on page 5 delete lines 1 through 3 in insert the 31 following in lieu thereof:

32	"A. Upon the first payment of compensation or upon any modification,
33	suspension, termination, or controversion of compensation or medical benefits for
34	any reason, including but not limited to issues of medical causation, compensability
35	of the claim, or issues arising out of R.S. 23:1121, 1124, 1208, and 1226, the
36	employer or payor who has been notified of the claim, shall do all of the following:
37	(1) Prepare a "Notice of Modification, Suspension, Termination, or
38	Controversion of Compensation and/or Medical Benefits".
39	(2) Send the notice of the initial indemnity payment to the injured employee
40	with the first payment of compensation made by the payor after the payor has
41	received notice of the claim from the employer.
42	(3) Send a copy of the notice of the initial payment of indemnity to the office
43	within ten days from the date the original notice was sent to the injured employee or
44	by facsimile to the injured employee's representative.
45	(4) Send the "Notice of Payment, Modification, Suspension, Termination,
46	or Controversion of Compensation and/or Medical Benefits" to the injured employee
47	by certified mail, to the address at which the employee is receiving payments of
48	compensation, on or before the effective date of a modification, suspension,
49	termination, or controversion.
50	(5) Send a copy of the "Notice of Payment, Modification, Suspension,
51	Termination, or Controversion of Compensation and/or Medical Benefits to the
52	office on the same business day as sent to the employee or to his representative.
53	B. The form of the "Notice of Payment, Modification, Suspension,
54	Termination, or Controversion of Compensation and/or Medical Benefits" shall be
55	promulgated by the office.

- C. The director shall make the notice available upon request by the employee and the employee's representative. D. If the injured employee is represented by an attorney, the notice shall also be provided to the employee's representative by facsimile. Proof that the notice was
- 5 sent to the employee's representative by facsimile shall be prima facie evidence of
 6 compliance with Subsection A of this Section.
- 7 <u>E. The provisions of this Section shall not apply to questions of medical</u>
 8 <u>necessity as provided by R.S. 23:1203.1.</u>
- 9 AMENDMENT NO. 13

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- 10 On page 5, line 4, change "<u>C.</u>" to "<u>F.</u>"
- 11 AMENDMENT NO. 14

12 On page 5, line 8, after "<u>appropriate.</u>" delete the remainder of the line and delete lines 9 and 13 10 in their entirety and insert in lieu thereof the following:

- "(2) No disputed claim shall be filed regarding any such disagreement unless
 the notice required by this Section has been sent to the employer or payor who
 initially sent the notice."
- 17 AMENDMENT NO. 15
- 18 On page 5, line 11, change "(2)" to "<u>G. (1)</u>"
- 19 AMENDMENT NO. 16
- 20 On page 5, line 17, change "(3)" to "(2)"
- 21 AMENDMENT NO. 17
- On page 5, line 28, change "(4) Only the" to "H. The" and delete "who initially sent the
 notice and has"
- 24 AMENDMENT NO. 18
- 25 On page 5, delete line 29 in its entirety
- 26 AMENDMENT NO. 19
- On page 6, line 1, delete "<u>suspension modification, termination, or controversion of</u>
 <u>benefits</u>,"
- 29 AMENDMENT NO. 20
- On page 6, line 3, after "<u>payment</u>" delete the comma "," and insert in lieu thereof "<u>or any</u>
 <u>subsequent</u>"
- 32 AMENDMENT NO. 21
- 33 On page 6, at the end of line 4, add the following:
- "In cases where a disputed claim is already pending when an issue arises from a
 subsequent notice of payment, modification, suspension, termination, or
 controversion of benefits, such request shall be made in an amended pleading filed
 within fifteen days of the expiration of the seven-day period set forth in Paragraph
 (F)(2) of this Section."

- 1 AMENDMENT NO. 22
- 2 On page 6, line 5, change "(5)" to "<u>I. (1)</u>" and delete "provided the first payment as required"
- 3 AMENDMENT NO. 23
- 4 On page 6, delete lines 6 through 8 in their entirety and insert in lieu thereof:

5 "complied with the requirements set forth in Subsections A through E of this Section
6 or has not initially accepted the claim as compensable, subject to further
7 investigation and subsequent controversion shall not be entitled to a preliminary
8 determination. An employer or payor who is not entitled to a preliminary
9 determination or who is so entitled but fails to request a preliminary determination
10 may"

- 11 AMENDMENT NO. 24
- On page 6, line 9, after "<u>R.S. 23:23:1201</u>" delete the period "." and insert "<u>at a trial on the merits or hearing held pursuant to Paragraph (K)(8) this Section.</u>
- 14 (2) If disputed by the parties, upon a rule to show cause held prior to the
 15 preliminary determination or any hearing held pursuant to this Section, the workers'
 16 compensation judge shall determine whether the employer is in compliance."
- 17 AMENDMENT NO. 25
- 18 On page 6, line 10, change "<u>D.</u>" to "<u>J.</u>"
- 19 AMENDMENT NO. 26
- 20 On page 7, line 3, change "<u>E.</u>" to "<u>K.</u>"
- 21 <u>AMENDMENT NO. 27</u>

On page 7, lines 16 and 17, delete "<u>of compensation/controversion of compensation and/or</u>
 <u>medical benefits</u>"

- 24 AMENDMENT NO. 28
- 25 On page 8, delete line 17 and insert in lieu thereof the following:

26	"(7) In matters where the employee has filed a disputed claim and the
27	employer or payor is not entitled to a preliminary determination, the matter shall
28	proceed to trial on the merits.
29	(8)(a) Upon motion of either party, whether or not the employer or payor is
30	entitled to a preliminary determination, the workers' compensation judge's ruling in
31	a hearing shall be conducted as an expedited summary proceeding and shall be
32	considered an order of the court and not requiring a further trial on the merits, if it
33	concerns any of the following matters:
34	(i) The employee has sought choice of physician pursuant to R.S.
35	<u>23:1121(B)(1).</u>
36	(ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).
37	(iii) The employer or payor seeks to compel the employee to sign the choice
38	of physician form pursuant to R.S. 23:1121(B)(5).
39	(iv) The employer or payor seeks to compel the employee's submission to
40	a medical examination pursuant to R.S. 23:1124.
41	(v) The employer seeks to require the employee to return form LWC-1025
42	<u>or LWC-1020.</u>
43	(vi) The employee seeks to have a suspension of benefits for failure to
44	comply with R.S. 23:1121(B)(1) lifted.

1	(vii) The employee seeks to have a suspension of benefits for failure to
2	submit to a medical examination lifted.
3	(viii) The employee seeks to have a suspension of benefits for failure to
4	comply with R.S. 23:1208(H) lifted.
5	(ix) The employee seeks to have a reduction in benefits for failure to
6	cooperate with vocational rehabilitation lifted.
7	(b)(i) The workers' compensation judge shall set the expedited summary
8	proceeding hearing date pursuant to R.S. 23:1201.1(K)(8)(a)(iii), (iv), and (v) within
9	three days of receiving the employer's motion for the expedited hearing. The hearing
10	shall be held not less than ten nor more than thirty days after the motion has been
11	<u>filed.</u>
12 13	(ii) The workers' compensation judge shall provide the notice of the hearing
13 14	date to the employee or his attorney at the same time and in the same manner than the notice of the hearing date is provided to the employer or payor.
14	(iii) For the purposes of this Section, the party seeking an expedited hearing
15	shall not be required to submit the dispute to mediation or go through a pretrial
17	conference before obtaining a hearing. The hearing shall be conducted as a rule to
18	show cause.
19	(c) The workers' compensation judge shall order the employee to sign the
20	choice of physician form, enforce the employee's submission to the medical
20	examination, or provide the LWC-1020 or LWC-1025 form as applicable unless the
22	employee can show good cause for his refusal.
23	(d) If the employee seeking relief pursuant to Paragraph (K)(8) of this
24	SEction can show good cause for his refusal, the workers' compensation judge shall
25	order the suspension or reduction in benefits lifted and the payment of any arrearage
26	due. If the employee fails to show good cause for refusal, the workers' compensation
27	judge shall order the suspension or reduction in benefits to continue until the
28	employee complies.
29	(e) An employer or payor who is entitled to a preliminary determination and
30	who complies with an order of the court issued pursuant to a hearing held in
31	accordance with Paragraph (K)(8) of this Section within ten calendar days shall not
32	be subject to any penalty or attorney fees arising out of the original notice which was
33	the subject of the hearing.
34	L. Notwithstanding any provision in this Section to the contrary, the failure
35	to comply with any provision of this Section shall not itself be considered a failure
36	to reasonably controvert benefits; however, failure of the employer or payor to
37	comply shall result in loss of penalty and attorney fee protections provided in this
38	Section.
39	* * *
40	§1208. Misrepresentations concerning benefit payments; penalty
41	* * *
42	F. Whenever the employer reports an injury to the office pursuant to R.S.
43	23:1306, the employer and employee shall certify their compliance with this Chapter
44	to the employer's insurer payor on a form prescribed by the director, which form
45	shall include all of the following information:
46	(1) A summary of the fines and penalties for workers' compensation fraud.
47	(2) The names, addresses, phone numbers, and signatures of the employee
48	and the employer.
49	(3) The fine or penalty that may be imposed for failure to report to the
50	insurer payor as required by this Section.
51	G. Whenever an employee receives benefits pursuant to this Chapter for
52 52	more than thirty days, the employee shall upon reasonable request report his other
53 54	earnings to his employer's insurer payor on a form prescribed by the director and
54 55	signed by the employee.
55 56	H.(1) Whenever an employee fails to report to his employer's insurer payor as required by this Section within fourteen days of his receipt of the appropriate
50	as required by and because wranni rouricen days of the receipt of the appropriate

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- 1 provided in this Chapter may be suspended. If otherwise eligible for benefits, the 2 employee shall be entitled to all of the suspended benefits after the form has been 3 provided to the insurer payor. Suspension of benefits by the employer or payor shall 4 be made in accordance with the provisions of R.S. 23:1201.1(A) through (E). The 5 employer or payor may move for an order to compel the employee to return the form. (2) Whenever an employer fails to report to its insurer payor as required by 6 this Section, the employer may be subject to a penalty of five hundred dollars, 7 8 payable to the insurer payor. 9 (3) The insurer payor may request a suspension of benefits or an assessment 10 of a penalty for the employer's failure to report as provided in this Subsection by filing a form LDOL-WC-1008 with the director. 11 * * *" 12 13 AMENDMENT NO. 29
- 14 On page 8, line 27, delete "claims"
- 15 AMENDMENT NO. 30
- 16 On page 8, lines 28 and 29, delete "shall be heard in an expedited hearing." and insert in lieu
- thereof "employee shall have a right to an expedited summary proceeding pursuant to R.S.
 23:1201.1(K)(8)."
- 19 AMENDMENT NO. 31
- 20 On page 9, line 1, delete "<u>employer's or payor's</u>"
- 21 AMENDMENT NO. 32
- 22 On page 9, line 2, change "employee or his representative" to "employer or payor"
- 23 AMENDMENT NO. 33
- 24 On page 9, line 3, change "<u>employer's or payor's</u>" to "<u>employee's</u>"
- 25 AMENDMENT NO. 34
- On page 9, lines 7 and 8, delete "medical examination" and insert in lieu thereof "issue of
 vocational services"
- 28 AMENDMENT NO. 35
- 29 On page 9, line 9, delete "<u>Unless the</u>" and delete lines 10 through 17 in their entirety
- 30 AMENDMENT NO. 36
- On page 9, line 24, delete "Refusal to accept" and delete lines 25 through 27 in their entirety
 and insert in lieu thereof the following:
- 33 "rehabilitation as deemed necessary by the worker's compensation judge shall
 34 result in a fifty percent reduction in Upon refusal by the employee, the employer or
 35 payor may reduce weekly compensation, including supplemental earnings benefits
 36 pursuant to R.S. 23:1221(3), by fifty percent for each week of the period of refusal.
 37 Reduction of benefits by the employer or payor shall be made in accordance with the
 38 provisions of R.S. 23:1201.1(A) through (E)."

1 AMENDMENT NO. 37

On page 10, line 17, delete "employee" and insert "employee, his dependant, or beneficiary" 2

3 AMENDMENT NO. 38

- 4 On page 10, line 18, delete "employee." and insert "employee, his dependant, or beneficiary;
- or when the employer or payor is an aggrieved party appealing a decision of the medical 5 6 director pursuant to R.S. 23:1203(K)."

7 AMENDMENT NO. 39

- 8 On page 10, at the end of line 24, insert "However, should any provision of this Act be
- 9 declared to apply prospectively only, all provisions of this Act shall be applied prospectively only."
- 10