Regular Session, 2013

HOUSE BILL NO. 728 (Substitute for House Bill No. 606 by Representative Cromer) BY REPRESENTATIVE CROMER

WORKERS COMPENSATION: Provides with respect to workers' compensation

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	* * *

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1	(13) "Payor" means the entity responsible, whether by law or contract, for
2	the payment of benefits incurred by a claimant as a result of a work related injury.
3	* * *
4	\$1121. Examination of injured employee
5	* * *
6	B.(1) The employee shall have the right to select one treating physician in
7	any field or specialty. The employee shall have a right to the type of an expedited
8	summary proceeding provided for in R.S. 23:1124(B) pursuant to R.S. 23:1201.1
9	(K)(8), when denied his right to an initial physician of choice. The workers'
10	compensation judge shall set the hearing date for the matter within three days of
11	receiving the employee's motion for the expedited hearing. The hearing shall be held
12	not less than ten nor more than thirty days after the employee or his attorney files the
13	motion for an expedited hearing. The workers' compensation judge shall provide
14	notice of the hearing date to the employer and insurer at the same time and in the
15	same manner that notice of the hearing date is provided to the employee or his
16	attorney. For the purposes of this Section, an employee shall not be required to
17	submit the dispute on the choice of physician to mediation nor go through a pretrial
18	conference before obtaining a hearing. The hearing shall be conducted as a rule to
19	show cause. The workers' compensation judge shall order the employer or payor to
20	authorize the claimant's choice of physician unless the employer or payor can show
21	good cause for his refusal. After his initial choice the employee shall obtain prior
22	consent from the employer or his workers' compensation carrier for a change of
23	treating physician within that same field or specialty. The employee, however, is not
24	required to obtain approval for change to a treating physician in another field or
25	specialty.
26	* * *
27	(5) If the employee fails or refuses to sign the form as provided in
28	Subparagraph (2)(b) and Paragraph (3) of this Subsection, the employer or his

29 insurer shall be entitled to seek an expedited hearing to be held within ten days, and

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1	upon order of the court, payor may suspend medical benefits until such time as the
2	employee complies with Subparagraph (2)(b) and Paragraph (3) of this Subsection.
3	Suspension of medical benefits by the employer or payor shall be made in
4	accordance with the provisions of R.S. $23:1201.1(A)(4)$ and (5). When the employee
5	has filed a disputed claim, the employer or payor may move for an order to compel
6	the employee to return the form.
7	* * *
8	§1124. Refusal to submit to examination; effect on right to compensation
9	A. If the employee refuses to submit himself to a medical examination at the
10	behest of the employer or an examination conducted pursuant to R.S. 23:1123, or in
11	anywise obstructs the same, his right to compensation and to take or prosecute any
12	further proceedings under this Chapter shall may be suspended by the employer or
13	payor until the examination takes place. Such suspension of benefits by the
14	employer or payor shall be made in accordance with the provisions of R.S.
15	23:1201.1(A)(4) and (5). When the employee has filed a disputed claim, the
16	employer or payor may move for an order to compel the employee to appear for an
17	examination. The employee shall receive at least fourteen days written notice prior
18	to the examination. When a right to compensation is suspended no compensation
19	shall be payable in respect to the period of suspension.
20	B. An employer or insurer who seeks to compel an employee's compliance
21	with a medical examination shall be granted an expedited hearing. The workers'
22	compensation judge shall set a hearing date for the matter within three days of
23	receiving the employer's or insurer's motion. The hearing shall be held not less than
24	ten nor more than thirty days after the employee, or his attorney, receives notice,
25	delivered by certified or registered mail, of the employer's or insurer's motion. The
26	workers' compensation judge shall provide notice of the hearing date to the employer
27	and insurer at the same time, and in the same manner, that notice of the hearing date
28	is provided to the employee or his attorney. For the purposes of this Section, an
29	employer or insurer need not submit the dispute on the medical examination to

1	mediation, nor go through a pretrial conference, before obtaining a hearing. The
2	hearing shall be conducted as a rule to show cause. Unless the employee can show
3	good cause for his refusal or obstruction of the medical examination, the workers'
4	compensation judge shall suspend the employee's compensation and prosecution
5	rights according to Subsection A of this Section.
6	* * *
7	\$1201. Time and place of payment; failure to pay timely; failure to authorize;
8	penalties and attorney fees
9	* * *
10	H.(1) Upon making the first payment of compensation and upon
11	modification or suspension of payment for any cause, the employer or insurer shall
12	immediately send a notice to the office, in the manner prescribed by the rules of the
13	director, that payment of compensation has begun or has been suspended, as the case
14	may be. After February 1, 2013, a payor, which shall mean that entity which is
15	responsible by law or contract for the payment of benefits or medical expenses
16	incurred by the claimant as a result of an injury covered by this Chapter, shall do all
17	of the following:
18	(a) Prepare a notice of payment. The form for the notice of payment shall
19	be promulgated by the office pursuant to the Administrative Procedure Act.
20	(b) Send the notice of payment to the injured employee, or the employee's
21	representative, with the first payment of compensation.
22	(c) Send the notice of payment to the injured employee, or the employee's
23	representative, within ten days of a suspension or modification to compensation for
24	any cause or within ten days of the suspension or modification of the supplemental
25	earnings benefit.
26	(d) Send a copy of the notice of payment to the office within ten days from
27	the date that the original notice of payment was sent to the injured employee or the
28	employee's representative.

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1	(2)(a) The injured employee or the employee's representative who disagrees
2	with any information provided on the notice of payment shall, in writing, notify the
3	payor of the basis for disagreement and provide the amounts believed appropriate.
4	(b) The payor, within five business days of receipt of the notice of
5	disagreement, shall do one of the following:
6	(i) Send a revised notice of payment along with a revised payment in
7	accordance therewith to the injured employee or the employee's representative.
8	(ii) If the payor believes that the amount determined in the original notice
9	of payment was correct, then the payor shall file a request for preliminary
10	determination, on a form to be promulgated by the office, and shall provide a copy
11	to the injured employee or the employee's representative.
12	(c) The preliminary determination shall be performed by the director's
13	designee, who shall be a workers' compensation judge specifically assigned to handle
14	preliminary determinations. Such preliminary determination hearing shall occur
15	within fifteen days of the filing of a request.
16	(d) The injured employee, the employee's representative, the payor and the
17	employer, which includes the direct employer of a statutory employee pursuant to
18	R.S. 23:1061, shall participate in a preliminary determination hearing by phone. The
19	workers' compensation judge may require any of these parties to produce relevant
20	records necessary for the determination of compensation provided for in the notice
21	of payment. No later than thirty days from the filing of the request for a preliminary
22	determination, the workers' compensation judge shall provide, in writing, a
23	recommended amount of compensation.
24	(e) The payor shall, within ten calendar days of the mailing of the
25	recommendation from the workers' compensation judge, either mail to the injured
26	employee or the employee's representative a revised notice of payment with the
27	recommended amount if such recommended amount is different from that which was
28	previously provided on the initial notice of payment, or notify the injured worker or
29	the employee's representative in writing that the payor does not accept the

1	recommendation. No disputed claim for compensation regarding the amount of
2	compensation due shall be filed until the provisions of this Subsection have been
3	exhausted unless such a disputed claim is in regard to a payor's failure to provide a
4	notice of payment as required by this Subsection. A payor who provides the
5	compensation amounts due as recommended by the workers' compensation judge
6	shall not be subject to any penalty and attorney fees regarding such calculation of the
7	compensation due and payment provided with the revised notice of payment.
8	(f) A payor who provides the compensation amounts due as recommended
9	by the workers' compensation judge's preliminary recommendation and who
10	disagrees with such preliminary recommendation shall file a disputed claim for
11	compensation within fifteen days of mailing the revised notice of payment and
12	compensation amount due.
13	(3) Within fourteen days after the final payment of compensation has been
14	made, the employer or insurer shall send a notice to the office, in the manner
15	prescribed by the rules of the director, stating:
16	(1) The name of the injured employee or any other person to whom
17	compensation has been paid, or both.
18	(2) The date of injury or death.
19	(3) The dates on which compensation has been paid.
20	(4) The total amount of compensation paid.
21	(5) The fact that final payment has been made.
22	* * *
23	<u>§1201.1.</u> Controversion of compensation and medical benefits
24	A. Upon the first payment of compensation or upon any modification,
25	suspension, termination, or controversion of compensation or medical benefits for
26	any reason, including but not limited to issues of medical causation, compensability
27	of the claim, or issues arising out of R.S. 23:1121, 1124, 1208, and 1226, the
28	employer or payor who has been notified of the claim, shall do all of the following:

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1	(1) Prepare a "Notice of Modification, Suspension, Termination, or
2	Controversion of Compensation and/or Medical Benefits".
3	(2) Send the notice of the initial indemnity payment to the injured employee
4	with the first payment of compensation made by the payor after the payor has
5	received notice of the claim from the employer.
6	(3) Send a copy of the notice of the initial payment of indemnity to the office
7	within ten days from the date the original notice was sent to the injured employee or
8	by facsimile to the injured employee's representative.
9	(4) Send the "Notice of Payment, Modification, Suspension, Termination,
10	or Controversion of Compensation and/or Medical Benefits" to the injured employee
11	by certified mail, to the address at which the employee is receiving payments of
12	compensation, on or before the effective date of a modification, suspension,
13	termination, or controversion.
14	(5) Send a copy of the "Notice of Payment, Modification, Suspension,
15	Termination, or Controversion of Compensation and/or Medical Benefits to the
16	office on the same business day as sent to the employee or to his representative.
17	B. The form of the "Notice of Payment, Modification, Suspension,
18	Termination, or Controversion of Compensation and/or Medical Benefits" shall be
19	promulgated by the office.
20	C. The director shall make the notice available upon request by the employee
21	and the employee's representative.
22	D. If the injured employee is represented by an attorney, the notice shall also
23	be provided to the employee's representative by facsimile. Proof that the notice was
24	sent to the employee's representative by facsimile shall be prima facie evidence of
25	compliance with Subsection A of this Section.
26	E. The provisions of this Section shall not apply to questions of medical
27	necessity as provided by R.S. 23:1203.1.
28	F.(1) Any injured employee or his representative who disagrees with any
29	information provided on the notice form sent by the employer or payor, shall notify

1	the employer or payor of the basis for disagreement by returning the form to the
2	employer or payor as provided on the form, or by letter of amicable demand, and
3	provide any amounts of compensation he believes appropriate.
4	(2) No disputed claim shall be filed regarding any such disagreement unless
5	the notice required by this Section has been sent to the employer or payor who
6	initially sent the notice.
7	G.(1) If the employer or the payor provides the benefit that the employee
8	claims is due, including any arrearage, on the returned form or letter of amicable
9	demand within seven business days of receipt of the employee's demand, the
10	employer or payor shall not be subject to any claim for any penalties or attorney fees
11	arising from the disputed payment, modification, suspension, termination, or
12	controversion.
13	(2) If the employer or payor does not provide the benefit that the employee
14	claims is due, the employee may file a disputed claim for benefit provided it is filed
15	within the prescriptive period established under R.S. 23:1209. If the prescription
16	date of the claim occurs within the seven-day waiting period, the employee will be
17	allowed to file a disputed claim without waiting the seven business days as provided
18	in Paragraph (2) of this Subsection. However, the employer or payor shall still be
19	allowed seven business days to provide the benefit that the employee claims is due,
20	and if the employer does provide the benefit, the disputed claim will be moot
21	regarding the issues arising out of the payment, suspension, modification,
22	termination, or controversion of benefits. All other issues alleged in the disputed
23	claim will be unaffected by the payment.
24	H. The employer or the payor who wishes to have a preliminary
25	determination hearing shall request the hearing in his answer to the disputed claim
26	arising from the notice of initial payment or any subsequent modification,
27	suspension, termination, or notice of controversion. In cases where a disputed claim
28	is already pending when an issue arises from a subsequent notice of payment,
29	modification, suspension, termination, or controversion of benefits, such request

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1	shall be made in an amended pleading filed within fifteen days of the expiration of
2	the seven-day period set forth in Paragraph (F)(2) of this Section.
3	I.(1) An employer or payor who has not complied with the requirements set
4	forth in Subsection A through E of this Section or has not initially accepted the claim
5	as compensable, subject to further investigation and subsequent controversion shall
6	not be entitled to a preliminary determination. An employer or payor who is not
7	entitled to a preliminary determination or who is so entitled but fails to request a
8	preliminary determination may be subject to penalties and attorney fees pursuant to
9	R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of
10	this Section.
11	(2) If disputed by the parties, upon a rule to show cause held prior to the
12	preliminary determination or any hearing held pursuant to this Section, the workers'
13	compensation judge shall determine whether the employer is in compliance.
14	J.(1) Upon the filing of the request for a preliminary determination hearing,
15	the workers' compensation judge shall initiate a telephone status conference with the
16	parties to schedule the discovery deadlines and to facilitate the exchange of
17	documents. The scope of the discovery will be limited to the issues raised in the
18	disputed payment, suspension, modification, termination, or controversion of
19	benefits. The preliminary determination hearing shall be a contradictory hearing at
20	which all parties shall have the opportunity to introduce evidence.
21	(2) The testimony of physicians may be introduced by certified records or
22	deposition. The parties may agree to allow uncertified medical records and
23	physician reports to be introduced into evidence. Witnesses may testify at the
24	hearing or, if agreed on by the parties, may offer testimony by introduction of a
25	deposition.
26	(3) The preliminary determination hearing shall be held no later than ninety
27	days from the scheduling conference. However, upon a showing of good cause, one
28	extension of an additional thirty days is permitted upon approval by the workers'

1	compensation judge. The workers' compensation judge shall issue a preliminary
2	determination no later than thirty days after the hearing.
3	(4) Any employer or payor requesting a preliminary determination hearing
4	shall produce all documentation relied on by the employer or payor in calculating,
5	modifying, suspending, terminating, or controverting the employee's benefits. These
6	documents shall be disclosed to the employee or the employee's representative within
7	ten days of the request for the preliminary determination hearing.
8	<u>K.(1)</u> The employer or payor shall, within ten calendar days of the mailing
9	of the determination from the workers' compensation judge, do either of the
10	following:
11	(a) Accept and comply with preliminary determination of the workers'
12	compensation judge regarding the payment, suspension, modification, termination,
13	or controversion of benefits and mail a revised "Notice of Modification, Suspension,
14	Termination, or Controversion of Compensation and/or Medical Benefits" to the
15	injured employee or employee's representative, along with any payment amount
16	determined, and any arrearage due.
17	(b) Notify the injured employee or his representative in writing that the
18	employer or payor does not accept the determination.
19	(2) Any employer or payor who accepts and complies with the workers'
20	compensation judge's determination within ten calendar days, shall not be subject to
21	any penalty or attorney fees arising out of the original notice which was the subject
22	of the preliminary hearing.
23	(3) Any employer or payor who accepts and complies with the workers'
24	compensation judge's determination, but who disagrees with such preliminary
25	determination, shall notify the court within ten days of receipt of the preliminary
26	determination of his desire to proceed to a trial on the merits of the matters that were
27	the subject of the preliminary hearing.
28	(4) Any employer or payor who does not accept the workers' compensation
29	judge's determination or fails to comply with the determination within ten calendar

1	days, may, at the trial on the merits, be subject to penalties and attorney fees
2	pursuant to R.S. 23:1201, arising out of the issues raised in the original notice of
3	payment, modification, suspension, termination, or controversion of benefits, which
4	was the subject of the preliminary hearing.
5	(5) Any injured employee who disagrees with the preliminary determination
6	shall notify the court within ten days of the receipt of such preliminary determination
7	of his desire to proceed to a trial on the merits of the matters that were the subject of
8	the preliminary hearing. If the employer or payor has accepted and complied with
9	the preliminary hearing determination, the employer or payor shall also be entitled
10	to litigate all issues including those issues presented at the preliminary determination
11	<u>hearing.</u>
12	(6) Any employer or payor who accepts and complies with the determination
13	of the workers' compensation judge, and who does not request to proceed to trial on
14	the merits of the matters that were the subject of the preliminary hearing, shall retain
15	the right to further controvert future matters. The workers' compensation judge's
16	determination shall not be considered an order concerning benefits due requiring
17	modification, nor shall the determination be considered res judicata of any matters
18	which were the subject of the preliminary hearing. The acceptance of the
19	preliminary determination by the employer or payor shall not be considered an
20	admission.
21	(7) In matters where the employee has filed a disputed claim and the
22	employer or payor is not entitled to a preliminary determination, the matter shall
23	proceed to trial on the merits.
24	(8)(a) Upon motion of either party, whether or not the employer or payor is
25	entitled to a preliminary determination, the workers' compensation judge's ruling in
26	a hearing shall be conducted as an expedited summary proceeding and shall be
27	considered an order of the court and not requiring a further trial on the merits, if it
28	concerns any of the following matters:

1	(i) The employee has sought choice of physician pursuant to R.S.
2	<u>23:1121(B)(1).</u>
3	(ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).
4	(iii) The employer or payor seeks to compel the employee to sign the choice
5	of physician form pursuant to R.S. 23:1121(B)(5).
6	(iv) The employer or payor seeks to compel the employee's submission to
7	a medical examination pursuant to R.S. 23:1124.
8	(v) The employer seeks to require the employee to return form LWC-1025
9	<u>or LWC-1020.</u>
10	(vi) The employee seeks to have a suspension of benefits for failure to
11	comply with R.S. 23:1121(B)(1) lifted.
12	(vii) The employee seeks to have a suspension of benefits for failure to
13	submit to a medical examination lifted.
14	(viii) The employee seeks to have a suspension of benefits for failure to
15	comply with R.S. 23:1208(H) lifted.
16	(ix) The employee seeks to have a reduction in benefits for failure to
17	cooperate with vocational rehabilitation lifted.
18	(b)(i) The workers' compensation judge shall set the expedited summary
19	proceeding hearing date pursuant to R.S. 23:1201.1(K)(8)(a)(iii), (iv), and (v) within
20	three days of receiving the employer's motion for the expedited hearing. The hearing
21	shall be held not less than ten nor more than thirty days after the motion has been
22	filed.
23	(ii) The workers' compensation judge shall provide the notice of the hearing
24	date to the employee or his attorney at the same time and in the same manner than
25	the notice of the hearing date is provided to the employer or payor.
26	(iii) For the purposes of this Section, the party seeking an expedited hearing
27	shall not be required to submit the dispute to mediation or go through a pretrial
28	conference before obtaining a hearing. The hearing shall be conducted as a rule to
29	show cause.

1	(c) The workers' compensation judge shall order the employee to sign the
2	choice of physician form, enforce the employee's submission to the medical
3	examination, or provide the LWC-1020 or LWC-1025 form as applicable unless the
4	employee can show good cause for his refusal.
5	(d) If the employee seeking relief pursuant to Paragraph (K)(8) of this
6	Section can show good cause for his refusal, the workers' compensation judge shall
7	order the suspension or reduction in benefits lifted and the payment of any arrearage
8	due. If the employee fails to show good cause for refusal, the workers' compensation
9	judge shall order the suspension or reduction in benefits to continue until the
10	employee complies.
11	(e) An employer or payor who is entitled to a preliminary determination and
12	who complies with an order of the court issued pursuant to a hearing held in
13	accordance with Paragraph (K)(8) of this Section within ten calendar days shall not
14	be subject to any penalty or attorney fees arising out of the original notice which was
15	the subject of the hearing.
16	L. Notwithstanding any provision in this Section to the contrary, the failure
17	to comply with any provision of this Section shall not itself be considered a failure
18	to reasonably controvert benefits; however, failure of the employer or payor to
19	comply shall result in loss of penalty and attorney fee protections provided in this
20	Section.
21	* * *
22	§1208. Misrepresentations concerning benefit payments; penalty
23	* * *
24	F. Whenever the employer reports an injury to the office pursuant to R.S.
25	23:1306, the employer and employee shall certify their compliance with this Chapter
26	to the employer's insurer payor on a form prescribed by the director, which form
27	shall include all of the following information:
28	(1) A summary of the fines and penalties for workers' compensation fraud.

23

(2) The names, addresses, phone numbers, and signatures of the employee 2 and the employer.

- 3 (3) The fine or penalty that may be imposed for failure to report to the 4 insurer payor as required by this Section.
- G. Whenever an employee receives benefits pursuant to this Chapter for 5 more than thirty days, the employee shall upon reasonable request report his other 6 7 earnings to his employer's insurer payor on a form prescribed by the director and 8 signed by the employee.
- 9 H.(1) Whenever an employee fails to report to his employer's insurer payor 10 as required by this Section within fourteen days of his receipt of the appropriate 11 form, the employer or payor may suspend the employee's right to benefits as 12 provided in this Chapter may be suspended. If otherwise eligible for benefits, the employee shall be entitled to all of the suspended benefits after the form has been 13 14 provided to the insurer payor. Suspension of benefits by the employer or payor shall 15 be made in accordance with the provisions of R.S. 23:1201.1(A) through (E). The 16 employer or payor may move for an order to compel the employee to return the form. 17 (2) Whenever an employer fails to report to its insurer payor as required by
- 18 this Section, the employer may be subject to a penalty of five hundred dollars, 19 payable to the insurer payor.
- 20 (3) The insurer payor may request a suspension of benefits or an assessment 21 of a penalty for the employer's failure to report as provided in this Subsection by 22 filing a form LDOL-WC-1008 with the director.

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- 24 §1226. Rehabilitation of injured employees
- 25 26 B. 27 \*
- 28 (3)(a) The employer shall be responsible for the selection of a licensed 29 professional vocational rehabilitation counselor to evaluate and assist the employee

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1 in his job placement or vocational training. Should the employer refuse to provide 2 these services, or a dispute arises concerning the work of the vocational counselor, 3 the employee may file a claim with the office to review the need for such services 4 or the quality of services being provided. The procedure for hearing such claims 5 shall be expedited as provided in R.S. 23:1124. employee shall have a right to an expedited summary proceeding pursuant to R.S. 23:1201.1(K)(8). The workers' 6 7 compensation judge shall set a hearing date within three days of receiving the 8 motion. The hearing shall be held not less than ten, nor more than thirty days, after 9 the employer or payor receives notice, delivered by certified or registered mail, of 10 the employee's motion. The workers' compensation judge shall provide notice of the 11 hearing date to the employer and payor at the same time and in the same manner that 12 notice of the hearing date is provided to the employee or his attorney. For the 13 purposes of this Section, an employee shall not be required to submit the dispute on 14 the issue of vocational services to mediation or go through a pretrial conference 15 before obtaining a hearing. The hearing shall be conducted as a rule to show cause. 16 (b) An employee shall have no right of action against a vocational counselor 17 for tort damages related to the performance of vocational services unless and until 18 he has exhausted the administrative remedy provided for in Subparagraph (a) of this 19 Paragraph. The running of prescription shall be suspended during the pendency of 20 the administrative proceedings provided for in this Paragraph. 21 (c) The expedited procedure shall also be made available to the employer to

require the employee's cooperation in the rehabilitation process. Refusal to accept
rehabilitation as deemed necessary by the worker's compensation judge shall result
in a fifty percent reduction in Upon refusal by the employee, the employer or payor
may reduce weekly compensation, including supplemental earnings benefits pursuant
to R.S. 23:1221(3), by fifty percent for each week of the period of refusal.
Reduction of benefits by the employer or payor shall be made in accordance with the
provisions of R.S. 23:1201.1(A) through (E).

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1	\$1310.8. Jurisdiction continuing; determining as to final settlement		
2	* * *		
3	B. Upon the application motion of any party in interest, on the ground of a		
4	change in conditions, the workers' compensation judge may, after a contradictory		
5	hearing, review any award, and, on such review, may make an award ending,		
6	diminishing, or increasing the compensation previously awarded, subject to the		
7	maximum or minimum provided in the Workers' Compensation Act, and shall state		
8	his conclusions of fact and rulings of law, and the director shall immediately send		
9	to the parties a copy of the award.		
10	* * *		
11	§1314. Necessary allegations; dismissal of premature petition; dispute of benefits		
12	* * *		
13	E. $(1)$ Notwithstanding any other provision of this Section, the employer shall		
14	be permitted to file a disputed claim to controvert benefits or concerning any other		
15	dispute arising under this Chapter or payor shall be permitted to file a disputed claim		
16	against an employee, his dependent, or beneficiary only when the employer or payor		
17	alleges the employee, his dependant, or beneficiary has committed fraud as provided		
18	in R.S. 23:1208 which caused the employer or payor to pay a benefit which was not		
19	due to the employee, his dependant, or beneficiary; or when the employer or payor		
20	is an aggrieved party appealing a decision of the medical director pursuant to R.S.		
21	<u>23:1203(K).</u>		
22	(2) Notwithstanding any other provision of this Section, the employer or		
23	payor shall be permitted to file a disputed claim against a person or entity other than		
24	an injured employee, his dependent, or beneficiary concerning any other dispute		
25	arising under this Chapter.		
26	Section 2. This Act is declared to be remedial, curative, and procedural and therefore		
27	is to be applied retroactively as well as prospectively. However, should any provision of this		
28	Act be declared to apply prospectively only, all provisions of this Act shall be applied		
29	prospectively only.		

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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)]

#### 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.

<u>Present law</u> requires an injured employee to be examined by a qualified medical practitioner as soon after the accident as demanded.

<u>Present law</u> further provides that the examination shall be paid for by the employer.

Proposed law retains present law.

<u>Present law</u> provides the employee with the right to select one treating physician in any field or specialty.

Proposed law retains present law.

<u>Present law</u> (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.

<u>Proposed law</u> deletes <u>present law</u> and provides that an employee shall have a right to an expedited hearing when denied his right to an initial physician of choice.

<u>Proposed law</u> (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.

<u>Proposed law</u> requires that the judge notify all parties of the hearing date in the same manner and at the same time.

<u>Proposed law</u> requires the authorization of the employee's choice of physician unless good cause is shown as to why it should not be authorized.

<u>Proposed law</u> 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".

<u>Proposed law</u> 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.

<u>Proposed law</u> does not apply in cases of medical necessity as defined by <u>present law</u> (R.S. 23:1203.1).

<u>Proposed law</u> requires the employer or payor to prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".

<u>Proposed law</u> 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.

<u>Proposed law</u> requires the director to make the notice available upon request of the employee.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> provides that only the employer or payor who initially sent the notice as required and has complied with the provisions of <u>proposed law</u>, who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice.

<u>Proposed law</u> provides that an employer or payor who does not comply may be subject to penalties and attorney fees.

<u>Proposed law</u> provides that the preliminary determination hearing shall be a contradictory hearing at which all parties may introduce evidence.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> requires that any employer or payor who requests a preliminary hearing must produce all documentation he relied upon in calculating the employee's benefits.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

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<u>Proposed law</u> 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.

<u>Proposed law</u> 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 <u>proposed law</u>.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Present law</u> (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.

<u>Present law</u> 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.

<u>Proposed law</u> provides that disputes shall be heard in an expedited hearing.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> provides that the hearing shall be conducted as a rule to show cause.

<u>Present law</u> (R.S. 23:1310.8) provides for jurisdiction of the workers' compensation judge in claim resolution.

<u>Present law</u> 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 <u>present law</u>.

<u>Proposed law</u> changes "application" to "motion" of any party of interest, but otherwise retains <u>present law</u>.

<u>Present law</u> (R.S. 23:1314) allows an employer to file a disputed claim to controvert benefits or concerning any other dispute in <u>present law</u>.

<u>Proposed law</u> 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.

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<u>Proposed law</u> 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 <u>from</u> "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.