

SENATE BILL NO. 198

BY SENATOR RISER

1 AN ACT

2 To amend and reenact R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171, 1171.1,
3 and 1291(C)(5) and to enact R.S. 23:1170(C), and to repeal R.S. 23:1168(A)(5),
4 relative to workers' compensation; to require for compliance; to provide for reporting
5 of compliant coverage; to provide for penalties; to provide for matters to be
6 determined by workers' compensation judges; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171, 1171.1, and
9 1291(C)(5) are hereby amended and reenacted and R.S. 23:1170(C) is hereby enacted to read
10 as follows:

11 §1168. Ways of securing compensation to employees

12 A. An employer shall secure compensation to his employees in one of the
13 following ways:

14 (1) By insuring and keeping insured the payment of such compensation with
15 any stock corporation, mutual association, or other concern authorized to transact the
16 business of workers' compensation insurance in this state. When an insurer issues a
17 policy to provide workers' compensation benefits pursuant to the provisions of the
18 Workers' Compensation Act, the insurer shall ~~file, or cause to be filed, with the~~
19 ~~director a notice in such form and detail as the director may prescribe by rule and~~
20 ~~regulation. The notice shall contain the name, address, and principal occupation of~~
21 ~~the employer, the number, effective date, and expiration date of the policy, and such~~
22 ~~other information as may be required by the director. The notice shall be filed by the~~
23 ~~insurer within thirty days after the effective date of the policy~~ **report to the National**
24 **Council on Compensation Insurance all policy information in accordance with**

1 the reporting guidelines established by the National Council on Compensation
 2 Insurance. Proof of coverage must be filed no later than thirty days after the
 3 effective date of coverage and include the name of each business entity
 4 operating in the state of Louisiana for which coverage is provided.

5 * * *

6 ~~(4) By using any combination of life, accident, health, property, casualty or~~
 7 ~~other insurance policies offered:~~

8 ~~(a) By any stock corporation, mutual association or other concern authorized~~
 9 ~~to transact the business of insurance in this state;~~

10 ~~(b) By any group of individual, unincorporated alien insurers with assets held~~
 11 ~~in trust for the benefit of its United States policyholders in a sum not less than one~~
 12 ~~hundred million dollars and which is authorized to transact insurance in at least one~~
 13 ~~state; or~~

14 ~~(c) By any other insurer which has been approved by the commissioner of~~
 15 ~~insurance, and has capital and surplus, or the equivalent thereof, of at least ten~~
 16 ~~million dollars and its financial condition, as evidenced by its most recent annual~~
 17 ~~statement, conforms substantially to the same standards of solvency which would be~~
 18 ~~required if such insurer were licensed in this state.~~

19 ~~(5)~~**(4)** By furnishing satisfactory proof to the director of the employer's
 20 financial ability to pay such compensation. The director, pursuant to rules adopted
 21 by the office for an individual self-insured or own risk carrier, including but not
 22 limited to rules relative to security and excess coverage, shall require that an
 23 employer:

24 (a) Deposit with the director securities or a surety bond in an amount
 25 determined by the director which would be at least an average of the yearly claims
 26 for the last three years.

27 (b) Provide proof of excess coverage with such terms and conditions as is
 28 commensurate with their ability to pay the benefits required by the provisions of the
 29 Workers' Compensation Act.

30 B.(1) The director may waive the requirements of Paragraph A~~(5)~~**(4)** of this

1 Section if he finds any company able to pay benefits, and that the requirements of
 2 these provisions are unnecessary. He shall establish rules which set standards for
 3 such waiver.

4 (2) The director shall waive the requirements of Paragraph A~~(5)~~(4) of this
 5 Section if any employer that is a municipality or other political subdivision of the
 6 state is able to demonstrate financial responsibility and ability to pay benefits by the
 7 filing of annual reports including statements of financial condition and summary loss
 8 data detailing past claims experience.

9 * * *

10 §1170. Penalty for failure to secure workers' compensation insurance; assessment
 11 and collection

12 A. In addition to any other penalty prescribed by law, any employer who fails
 13 to secure compensation required by R.S. 23:1168 shall be liable for a civil penalty,
 14 to be assessed by the ~~executive director or his designee~~ **workers' compensation**
 15 **judge**, of not more than two hundred fifty dollars per employee for a first offense,
 16 and liable for a civil penalty of not more than five hundred dollars per employee for
 17 a second or subsequent offense; however, the maximum civil penalty for a first
 18 offense shall not exceed ten thousand dollars for all related series of violations. All
 19 civil penalties collected shall be deposited in the Office of Workers' Compensation
 20 Administrative Fund established in R.S. 23:1291.1(E).

21 B. The ~~financial and compliance officer of the office of worker's~~
 22 ~~compensation~~ **workers' compensation judge** shall assess ~~and collect~~ any civil
 23 penalty incurred under R.S. 23:1170(A) **Subsection A of this Section** against any
 24 employer who fails to provide proof of compliance within fifteen days of any notice.
 25 **Any penalty assessed and collected pursuant to this Section shall be forwarded**
 26 **to the fraud administrator for collection.** In his discretion, the ~~financial and~~
 27 ~~compliance officer~~ **fraud administrator** may remit, mitigate, or negotiate ~~said~~ **the**
 28 penalty if proof of the mitigating circumstances is provided within fifteen days of
 29 notice of the assessment. In determining the amount of the penalty to be assessed,
 30 or the amount agreed upon in any negotiation, consideration shall be given to the

1 appropriateness of such penalty in light of the life of the business of the employer
2 charged, the gravity of the violation, and the extent to which the employer charged
3 has complied with the provisions of R.S. 23:1168, or has otherwise attempted to
4 remedy the consequences of the said violation. Individual proceedings shall be
5 conducted pursuant to the provisions of R.S. 23:1171.

6 **C. In addition to any penalties assessed in accordance with the provisions**
7 **of this Chapter, the workers' compensation judge shall order the employer to**
8 **provide proof of compliance with R.S. 23:1168 within forty-five days of the**
9 **order.**

10 §1171. Civil fine; hearing; appeal

11 ~~A. The financial and compliance officer shall determine from all of the~~
12 ~~evidence submitted by the employer a fair and equitable resolution of the violation,~~
13 ~~taking into consideration any mitigating circumstances timely submitted as required~~
14 ~~by R.S. 23:1170. The financial and compliance officer shall assess, upon~~
15 ~~examination of the information submitted, a penalty commensurate with the violation~~
16 ~~so adjudged. However, the employer may provide additional mitigating~~
17 ~~circumstances or evidence to the financial and compliance officer within ten days of~~
18 ~~the assessment, and a reevaluation of the penalty shall be conducted. Unless a formal~~
19 ~~hearing is requested pursuant to the provisions of R.S. 23:1171(B), the penalty shall~~
20 ~~become final within thirty days of assessment. Upon becoming final, the penalty~~
21 ~~shall be regarded as any other money judgment and may be pursued for collection~~
22 ~~as prescribed by law for any other such remedy.~~

23 ~~B. An employer may appeal the decision of the financial and compliance~~
24 ~~officer to the workers' compensation judge in the district in which the business of the~~
25 ~~employer is located or East Baton Rouge Parish by filing, within thirty days of the~~
26 ~~date of assessment, a written request for a formal hearing, which request should be~~
27 ~~filed on a disputed claim form. All appeals to the workers' compensation judge shall~~
28 ~~be de novo. A final order from a hearing may be appealed to the appropriate court~~
29 ~~of appeal **in the manner provided in R.S. 23:1310.5(B) for appealing decisions**~~
30 ~~**regarding disputed claims.**~~

1 §1171.1. Discontinuance of business; injunction; procedure

2 A. The director, or his designee, shall investigate an employer if he receives
3 information from any person or entity that such employer has failed to provide
4 security for compensation as required by R.S. 23:1168. If such allegations can be
5 reasonably substantiated, and the employer has previously been subject to a civil
6 penalty pursuant to R.S. 23:1170 or criminal penalties pursuant to R.S. 23:1172,
7 the director, or his designee, and the employer has previously been fined under
8 R.S. 23:1170 or been penalized under R.S. 23:1172, the director shall notify the
9 employer that, unless he can show proof of compliance with R.S. 23:1168 within
10 fifteen days, he may ~~shall~~ be subject to further fines and penalties including but not
11 limited to an injunction against further business operations a civil penalty pursuant
12 to the provisions of R.S. 23:1170.

13 B. ~~If within fifteen days of the employer's receipt of such notice, he has not~~
14 ~~submitted to the director satisfactory proof of such compliance, the director shall set~~
15 ~~the matter for hearing in accordance with the procedures set forth by law for claims~~
16 ~~for workers' compensation benefits~~ If such allegations can be reasonably
17 substantiated and the employer has been fined under R.S. 23:1170 or penalized
18 under R.S. 23:1172, the director shall notify the employer that unless he can
19 show proof of compliance with R.S. 23:1168 within fifteen days, he shall be
20 subject to further fines and penalties, including but not limited to an injunction
21 against further business operations.

22 C. If within fifteen days of the employer's receipt of such notice he has
23 not submitted to the director satisfactory proof of such compliance, the director
24 or his designee shall request the workers' compensation judge of any district
25 where the employer does business to set the matter for hearing in accordance
26 with the procedures set forth by law for claims for workers' compensation
27 benefits. Upon the request of the director or his designee, the workers'
28 compensation judge shall issue a rule to show cause to the employer why he
29 should not be fined or penalized for failure to show proof of compliance with
30 R.S. 23:1168 when requested.

1 D.(1) If at such hearing, it is determined that the employer is in violation of
 2 his obligation under R.S. 23:1168, the workers' compensation judge ~~may~~ **shall** fine
 3 the employer in the manner provided pursuant to R.S. 23:1170(A) and shall order the
 4 employer to ~~secure workers' compensation insurance and file evidence of coverage~~
 5 ~~within ninety days of the order~~ **provide proof of compliance with R.S. 23:1168**
 6 **within forty-five days of the order by securing the appropriate coverage.** Should
 7 the employer fail to file such evidence, the workers' compensation judge shall **assess**
 8 **a fine for a second offense and** issue a cease and desist order prohibiting the
 9 employer from continuing its business operations until such time as the employer
 10 complies with R.S. 23:1168, and all fines issued are paid in full.

11 (2) Any cease and desist order issued by the workers' compensation judge
 12 under Paragraph ~~(C)~~(1) of this Subsection shall include specific findings of fact
 13 based upon evidence of all of the following:

14 (a) The employer received notice of the hearing.

15 (b) The employer employs employees for whom it must secure workers'
 16 compensation insurance or be authorized to self-insure under the provisions of this
 17 Chapter.

18 (c) The employer has willfully failed to provide security for compensation
 19 as required by R.S. 23:1168 and there has been a final determination in a matter in
 20 which the employer has been fined under R.S. 23:1170 or penalized under R.S.
 21 23:1172.

22 (d) The employer continues to operate its business in the absence of such
 23 security for compensation.

24 (3) There shall be a presumption that an employer who has previously been
 25 civilly fined for a second offense, or has previously been criminally penalized, has
 26 willfully failed to secure his obligation under R.S. 23:1168.

27 (4) A cease and desist order shall not issue prior to a hearing and there shall
 28 be no interruption of an employer's business operation if he submits satisfactory
 29 proof to the workers' compensation judge of his compliance with R.S. 23:1168,
 30 regardless of whether he may have been in violation thereof previously.

1 ~~D.E.~~ (1) After the issuance of a cease and desist order and upon the request
 2 of the director or the director's designee, the attorney general shall immediately
 3 institute proceedings for injunctive relief against the employer in the district court
 4 of any judicial district in this state where the employer does business. In such district
 5 court proceedings, a certified copy of any cease and desist order entered by the
 6 workers' compensation judge in accordance with this Section based upon evidence
 7 in the record shall be prima facie evidence of the facts found in such record.

8 (2) Such injunctive relief may include the issuance of a temporary restraining
 9 order under Louisiana Code of Civil Procedure Article 3601 et seq., which order
 10 shall enjoin the employer from continuing its business operations until it has
 11 procured the required insurance or authorization to self-insure or has posted adequate
 12 security with the court pending the procurement of such insurance or authorization.
 13 The court, in its discretion, shall determine the amount that shall constitute adequate
 14 security.

15 ~~E.F.~~ The issuance of an order to cease and desist or the issuance of a
 16 temporary restraining order or an injunction against an employer for failure to insure
 17 or keep insurance in force as required by R.S. 23:1168 shall be in addition to any
 18 civil or criminal penalties imposed by any other provision of law or Paragraph
 19 ~~€(D)~~(1) of this Section.

20 PART IV. ADMINISTRATION OF CLAIMS

21 SUBPART A. OFFICE OF WORKERS' COMPENSATION ADMINISTRATION

22 §1291. Creation, powers, and duties of the office of workers' compensation
 23 administration

24 * * *

25 C. There shall be established within the office the following sections:

26 * * *

27 (5) A workers' compensation fraud section, which shall administer the
 28 provisions of R.S. 23:1170, 1171, 1171.1, 1172, 1172.1, 1172.2, 1208, and 1295 by
 29 investigating allegations of workers' compensation fraud and noncompliance by
 30 employers.

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Section 2. R.S. 23:1168(A)(5) is hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____