

Regular Session, 2009

HOUSE BILL NO. 729

BY REPRESENTATIVES BILLIOT, ST. GERMAIN, ARNOLD, AUBERT, BOBBY BADON, BALDONE, BARRAS, HENRY BURNS, TIM BURNS, CHAMPAGNE, CHANDLER, CHANEY, CONNICK, DIXON, DOERGE, GISCLAIR, GUINN, HARDY, HOFFMANN, HOWARD, MICHAEL JACKSON, JOHNSON, LABRUZZO, LAMBERT, LANDRY, LEBAS, LIGI, MILLS, MONICA, NORTON, PERRY, POPE, PUGH, RICHARD, RICHMOND, RITCHIE, ROY, SCHRODER, SIMON, GARY SMITH, PATRICIA SMITH, TEMPLET, THIBAUT, TUCKER, WADDELL, WHITE, WILLIAMS, WILLMOTT, AND WOOTON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FIRE PROTECT/FIREMEN: Provides workers' compensation coverage for volunteer firefighters

1 AN ACT

2 To amend and reenact R.S. 22:347(A)(1) and R.S. 23:1036(A), (C)(1) and (3), (E), and (H),

3 to enact R.S. 23:1036(C)(4) and (L), and to repeal R.S. 23:1036(D)(3), (F), (G), and

4 (J), relative to workers' compensation for firefighters; to provide for the disposition

5 of tax money for the state fire marshal; to require workers' compensation coverage

6 for volunteer firefighters; to provide relative to medical benefits payable; to provide

7 for burial expenses; to require fire companies to furnish certain documents to the fire

8 marshal; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:347(A)(1) is hereby amended and reenacted to read as follows:

11 §347. Disposition of tax money

12 A. Monies collected under R.S. 22:342 through 349, after being first credited

13 to the Bond Security and Redemption Fund in accordance with Article VII, Section

14 9(B) of the Constitution of Louisiana, shall be credited to a special fund hereby

15 established in the state treasury and known as the "Two Percent Fire Insurance Fund"

16 hereinafter the "fund". Monies in the fund shall be available in amounts appropriated

1 annually by the legislature for the following purposes in the following order of
2 priority:

3 (1)(a) For the state fire marshal, an amount necessary to satisfy the
4 requirements of R.S. 40:1593, relative to the purchase of group insurance for
5 volunteer firefighters.

6 (b) For the state fire marshal, an amount necessary to satisfy the requirements
7 of R.S. 23:1036, relative to the purchase of workers' compensation insurance for
8 volunteer firefighters.

9 * * *

10 Section 2. R.S. 23:1036(A), (C)(1) and (3), (E), and (H) are hereby amended and
11 reenacted and R.S. 23:1036(C)(4) and (L) are hereby enacted to read as follows:

12 §1036. Volunteer firefighters

13 A. It is hereby declared by the Legislature of Louisiana that the fire
14 prevention and suppression services provided by volunteer fire companies are vital
15 to the protection of the safety of the citizens of the state. This Section is intended to
16 present the state fire marshal with a means by which he ~~may elect to~~ shall provide
17 workers' compensation coverage to volunteer members of fire companies. ~~If the~~
18 ~~state fire marshal elects to provide workers' compensation coverage to volunteer fire~~
19 ~~company members, the~~ The remedies provided herein shall constitute the exclusive
20 remedy of the volunteer member against the fire company as provided in R.S.
21 23:1032.

22 * * *

23 C.(1) The state fire marshal ~~may~~ shall obtain workers' compensation
24 insurance for ~~fire companies that are not political subdivisions or that are separate~~
25 ~~from any political subdivision to provide coverage for volunteer members, as defined~~
26 herein, who participate in the normal functions of the fire company. Nothing shall
27 prohibit the state fire marshal from obtaining an insurance policy to provide
28 coverage for a single fire company or multiple fire companies.

29 * * *

(3) ~~A person who establishes entitlement to temporary total disability benefits, or establishes entitlement to permanent total disability benefits, shall be paid the minimum weekly benefit as determined under R.S. 23:1202, notwithstanding any wages earned by the volunteer member in any other employment or any other provision of law. Any member who is not carried on the membership list of the organization as of the date of the member's injury shall not be entitled to the benefits of this Section.~~

8 (4) The fire chief shall by written affidavit attest to the fact that the injury
9 to the volunteer member occurred while the volunteer member was in the line of
10 duty.

11 * *

12 E. ~~Benefits under this Section shall be payable as follows:~~

~~(1) No compensation shall be paid for the first week after the injury is received, provided that, in cases where disability from injury continues for six weeks or longer after date of the accident, compensation for the first week shall be paid after the first six weeks have elapsed.~~

~~(2) The first installment of minimum weekly indemnity benefits payable for temporary total disability, permanent total disability, or death shall become due on the fourteenth day after the fire company or its insurer has knowledge of the injury or death, on which date all such compensation then due shall be paid.~~

~~(3) Installment benefits payable pursuant to R.S. 23:1221(3) shall become due on the fourteenth day after the fire company or its insurer has knowledge of the compensable claim for supplemental earnings benefits, on which date all such compensation then due shall be paid.~~

~~(4) Installment benefits payable pursuant to R.S. 23:1221(4) shall become due on the thirtieth day after the fire company or its insurer receives a medical report giving notice of the permanent partial disability, on which date all such compensation then due shall be paid.~~

1 (5) Medical benefits payable under this Section shall be paid within sixty
2 days after the fire company, its insurer, or ~~third-party~~ third-party administrator
3 receives written notice thereof. If the volunteer member or his ~~or her~~ representative
4 knows or reasonably should know that the fire company's coverage is administered
5 or underwritten by an insurance carrier or ~~third-party~~ third-party administrator, then
6 the sixty-day payment period begins when written notice is received by the carrier
7 or ~~third-party~~ third-party administrator.

8 (6) ~~The volunteer member's right to permanent total disability benefits shall~~
9 ~~in no event exceed five hundred twenty weeks. Any week in which the volunteer~~
10 ~~member receives payment under R.S. 23:1221(1), (3), or (4) shall be credited against~~
11 ~~the five hundred twenty week maximum.~~

12 (7) ~~The volunteer member's right to temporary total disability benefits shall~~
13 ~~be limited as provided in R.S. 23:1221(1)(d).~~

14 H. For injury causing death within two years after the last treatment resulting
15 from the accident, there shall be paid ~~to the legal dependents of the volunteer~~
16 ~~member a weekly sum as computed in accordance with R.S. 23:1232, provided all~~
17 ~~of the following:~~ reasonable expenses of burial of the volunteer member, not to
18 exceed seven thousand five hundred dollars.

19 (1) ~~The person claiming to be a legal dependent must demonstrate actual~~
20 ~~dependence for support, whether in whole or in part, upon the volunteer member's~~
21 ~~earnings from his other employment at the time of the accident and death.~~

22 (2) ~~The person claiming to be a legal dependent shall be entitled to a share~~
23 ~~of the weekly payment under this Subsection only in the same proportion that the~~
24 ~~volunteer member's contribution to the person's support in the year prior to his death~~
25 ~~bears to the volunteer member's earnings at the time of death.~~

26 (3) ~~For purposes of calculating the weekly benefits payable under this~~
27 ~~Subsection, the volunteer member shall be deemed to have wages equal to the federal~~
28 ~~minimum wage rate. The benefits payable pursuant to this Subsection shall be~~

1 computed by multiplying the deemed wages by the hours actually spent participating
2 in the normal functions of the organization.

3 * * *

4 L. A fire company shall provide upon request and within a reasonable time
5 period documents, materials, or other information to the state fire marshal in order
6 to effectuate the provisions of this Section.

7 Section 3. R.S. 23:1036(D)(3), (F), (G), and (J) are hereby repealed in their entirety.

8 Section 4. In order to implement the provisions of R.S. 23:1036, each fire
9 department to which funds are allocated and paid pursuant to R.S. 22:347(B) shall pay to the
10 state fire marshal from funds so paid to the fire department for the 2008-2009 Fiscal Year,
11 an amount as requested by the state fire marshal, not to exceed three percent of the funds so
12 paid to the fire department.

Section 5. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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)]

Billiot

HB No. 729

Abstract: Requires workers' compensation coverage for volunteer members of fire companies.

Present law (R.S. 22:347(A)(1)) provides that monies collected, after being first credited to the Bond Security and Redemption Fund, shall be credited to a special fund known as the "Two Percent Fire Insurance Fund" and shall be appropriated annually by the legislature for the state fire marshal to purchase group insurance for volunteer firefighters.

Proposed law retains present law and requires the availability of monies in the fund for the purposes of purchasing workers' compensation insurance for volunteer firefighters.

Present law (R.S. 23:1036(A)) provides for workers' compensation benefits for volunteer firemen.

Present law provides that if a fire company decides to provide such coverage, workers' compensation benefits shall constitute the exclusive remedy of the volunteer member against the fire company.

Proposed law requires the state fire marshal to obtain workers' compensation coverage for volunteer members of fire companies.

Present law (R.S. 23:1036(C)(1)) provides that a fire company which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its volunteer members who participate in the normal functions of the organization.

Proposed law requires the workers' compensation coverage and allows the state fire marshal to provide coverage for a single fire company or multiple fire companies.

Present law (R.S. 23:1036(C)(3)) provides that the volunteer who is entitled to temporary total disability benefits (TTD) or permanent total disability (PTD) benefits shall be paid the minimum weekly benefit amount which is 20% of the average weekly wage paid in all employment subject to the La. Employment Security Law.

Proposed law (R.S. 23:1036(C)(3)) changes present law and provides that any member who is not carried on the membership list of the organization as of the date of the member's injury shall not be entitled to benefits.

Proposed law (R.S. 23:1036(C)(4)) provides that the fire chief shall by written affidavit attest to the fact that the injury to the volunteer member occurred while the volunteer member was in the line of duty.

Present law provides for definitions of terms.

Present law (R.S. 23:1036(E)) provides that benefits shall be payable as follows:

- (1) No compensation shall be paid for the first week after the injury is received, but if the injury continues for six weeks or longer after the date of the accident, the first week shall be compensated.
- (2) The first installment for TTD, PTD, or death to be due on the 14th day after the notice of the injury or death.
- (3) The first installment for supplemental earnings benefits (SEB) shall become due the 14th day after notice of the claim.
- (4) The first installment for permanent partial disability benefits (PPD) shall become due on the 30th day after receiving the medical report giving notice of the injury.
- (5) The volunteer's right to PTD is limited to 520 weeks and provides for credit for benefits received for TTD, SEB, and PPD.
- (6) The volunteer's right to TTD is limited to the point in which the condition resolves itself so the degree of disability may be assessed or six months, whichever occurs first.

Proposed law repeals present law and provides that medical benefits shall be paid within 60 days of written notice.

Present law (R.S. 23:1036(F)) provides that the amount of SEB and PPD benefits shall be computed as though the volunteer's wage was the federal minimum wage times the hours actually spent participating in the normal functions of the organization.

Proposed law repeals present law.

Present law (R.S. 23:1036(G)) limits the volunteer's right to SEB to 260 weeks. Provides that it shall terminate: (1) at the end of a one-year period following TTD termination, unless SEB were payable for 13 consecutive weeks; (2) after 260 weeks with a credit for each week in which any type of indemnity benefits were paid; or (3) when the volunteer retires or begins to receive social security, whichever comes first; however, SEB shall be payable for at least 52 weeks.

Proposed law repeals present law.

Present law (R.S. 23:1036(H)) provides that for death within two years after the last treatment resulting from the accident, the volunteer's legal dependents shall be paid as provided in present law if: (1) the person claiming to be a legal dependent can demonstrate actual dependence for support on the volunteer member's earning from his other employment at the time of the accident and death; (2) only in proportion that the volunteer member's contribution to the person's support in the year prior to his death bears to the volunteer member's earnings at the time of death; and (3) volunteer member's wage shall be considered to be the federal minimum wage at the hours actually spent participating in the normal functions of the organization.

Proposed law repeals present law and provides for the payment of reasonable burial expenses, not to exceed \$7,500 for injury causing death within two years after the last treatment resulting from the accident.

Present law (R.S. 23:1036(J)) allows offset available under present law and for disability payment to the volunteer member to the extent such disability payments are funded by the fire company or member's other employment.

Proposed law repeals present law.

Proposed law (R.S. 23:1036(L)) requires that a fire company provide upon request and within a reasonable time period documents, materials, or other information to the state fire marshal in order to effectuate the provisions of proposed law.

In order to implement the provisions of R.S. 23:1036, each fire department to which funds are allocated and paid pursuant to R.S. 22:347(B) shall pay to the state fire marshal from funds so paid to the fire department for the 2008-2009 Fiscal Year, an amount as requested by the state fire marshal, not to exceed 3% of the funds so paid to the fire department.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 22:347(A)(1) and R.S. 23:1036(A), (C)(1) and (3), (E), and (H); Adds R.S. 23:1036(C)(4) and (L); Repeals R.S. 23:1036(D)(3), (F), (G), and (J))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Requires a fire chief by written affidavit to attest to the fact that the injury to the volunteer member occurred while the volunteer member was in the line of duty.
2. Requires that a fire company provide upon request and within a reasonable time period documents, materials, or other information to the state fire marshal.

House Floor Amendments to the engrossed bill.

1. Adds a provision allowing the state fire marshal to be paid up to 3% by each fire department from their funds for the 2008-09 Fiscal Year for the implementation of the volunteer workers' compensation coverage.