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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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## DIGEST

Donahue (SB 763)

Present law provides that the office of workers' compensation shall oversee the payments and benefits regarding workers' compensation.

Proposed law maintains present law and provides that the law be cited as the "Louisiana Workers' Compensation Law."

Proposed law provides legislative purpose as follows:

1. To provide for the payment of timely, temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is required by workers' compensation laws.
2. To pay the medical expenses that are due to all injured workers who are covered under the workers' compensation laws.
3. To return such workers, who have received workers' compensation benefits to the work force.

Proposed law provides legislative intent as follows:

1. That the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with the law.
2. To facilitate injured workers' return to employment at a reasonable cost to the employer.

Proposed law provides that the Act shall be construed as follows:

1. The provisions of the Act are to be based on the mutual renunciation of legal rights and defenses by employers and employees alike; therefore, it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits.
2. Disputes concerning the facts in workers' compensations cases shall not be given a broad, liberal construction in favor of either employees or employers; therefore, the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee.
3. According to the La. Constitution Art. III, Sec. 1, the legislative powers of the state are vested solely in the legislature; therefore, when the workers' compensation statutes of this

state are to be amended, the legislature acknowledges its responsibility to do so. Proposed law further provides that if the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature.

Present law provides that, when an employer fails to timely pay a covered employee the accurate amount of monetary benefits due or fails to provide the required medical or vocational services, the employer shall be required to pay certain penalties and attorney fees.

Proposed law provides that a payor means that entity which is responsible for the payment of benefits or medical expenses incurred by the claimant as a result of an injury covered by the workers' compensation law.

Proposed law provides that a payor will do all of the following:

1. Prepare a notice of payment. The form for the notice of payment shall be promulgated by the office of workers' compensation pursuant to the A.P.A.
2. Send the notice of payment to the injured employee, or the employee's representative, with the first payment of compensation.
3. Send the notice of payment to the injured employee, or the employee's representative, within 10 days of a suspension or modification to compensation for any cause or within 10 days of the suspension or modification of the supplemental earnings benefit.
4. Send a copy of the notice of payment to the office within 10 days of the original notice of payment being sent to the injured employee or the employee's representative.

Proposed law provides that the injured employee who disagrees with any information provided on the notice of payment is to notify, in writing, the payor of the basis for disagreement and provide the amounts believed appropriate.

Proposed law provides that a payor, within five business days of receipt of the notice of disagreement, shall do one of the following:

1. Send a revised notice of payment along with a revised payment in accordance therewith to the injured employee or the employee's representative.
2. If the payor believes that the amount determined in the original notice of payment was correct, then the payor shall file a request for preliminary determination, on a form to be promulgated by the office, and shall provide a copy to the injured employee or the employee's representative.

Proposed law provides that the preliminary determination shall be performed by the designee of the director of the office of workers' compensation. Proposed law further provides that the

designee shall be a workers' compensation judge specifically assigned to handle preliminary determinations.

Proposed law provides that the preliminary determination hearing will occur within 15 days of the filing of a request.

Proposed law provides that the injured employee, the employee's representative, the payor and the employer, which includes the direct employer of a statutory employee pursuant to R.S. 23:1061, shall participate in a preliminary determination hearing by phone. Proposed law provides that the workers' compensation judge may require any of these parties to produce relevant records necessary for the determination of compensation provided for in the notice of payment.

Proposed law provides that no later than 30 days from the filing of the request for a preliminary determination, the workers' compensation judge will provide a recommended amount of compensation.

Proposed law provides that the payor shall, within 10 calendar days of the mailing of the recommendation from the workers' compensation judge, either mail to the injured employee or the employee's representative a revised notice of payment with the recommended amount if such recommended amount is different from that which was 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 recommendation.

Proposed law provides that no disputed claim for compensation, regarding the amount of compensation due shall be filed until the provisions of this preliminary determination has been exhausted unless such a disputed claim is in regard to a payor's failure to provide a notice of payment. Proposed law further provides that a payor who provides the 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 compensation due and payment provided with the revised notice of payment.

Proposed law provides that the 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 15 days of mailing the revised notice of payment and compensation amount due.

Present law provides that an employer will pay reasonable expenses of the burial of the covered employee, who dies as a result of a work related injury, in an amount not to exceed \$7,500.

Proposed law increases the amount from \$7,500 to \$8,500.

Present law provides that for injury resulting in the employee's inability to earn wages equal to ninety percent or more of wages at time of injury, supplemental earnings benefits, equal to 66 2/3% of the difference between the average monthly wages at time of injury and average monthly wages earned or average monthly wages the employee is able to earn in any month thereafter in

any employment or self-employment.

Proposed law retains present law and provides that supplemental earnings benefits shall be paid monthly.

Present law provides that payments of compensation will be paid as near as may be possible, at the same time and place as wages were payable to the employee before the accident; however, when the employee is not living at the place where the wages were paid, or is absent therefrom, such payments shall be made by mail, upon the employee giving to the employer a sufficient mailing address. Present law further provides that a longer interval, not to exceed one month, may be substituted by agreement without approval of the director. An interval of more than one month must be approved by the director.

Proposed law retains present law but provides that, when the employee is entitled to monthly supplemental earnings benefits but is not receiving any income from employment or self-employment and the employer has not established earning capacity, supplemental earning benefits shall be made in the manner as present law.

Present law provides that, in addition to any other benefits to which an injured employee may be entitled, any employee suffering an injury as a result of an accident arising out of and in the course and scope of his employment shall be entitled to a sum of \$30,000, payable within one year after the date of the injury. Proposed law increases the amount from \$30,000 to \$50,000.

Present law provides that when an injured employee seeks medical treatment and a dispute arises with the payor over the necessity of such treatment, the injured employee may seek review of the denial of medical treatment with the medical director with the office of workers' compensation.

Present law provides that no compensation shall be paid for the first week after the injury is received provided that the disability from the injury continues for six weeks or longer after the date of the accident, compensation for the first week shall be paid after the first six weeks.

Proposed law changes the number of weeks from six to two in both instances.

Proposed law provides that disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained.

Present law clarifies that the employer shall be permitted to file a disputed claim to controvert benefits or concerning any other dispute arising under workers' compensation law.

Effective August 1, 2012.

(Amends R.S. 23:1201(F) and (H), 1210(A), 1221(3)(a) and (4)(s)(i), 1224, and the heading of 1314; adds R.S. 23:1020.1 and 1314(D) and (E))