

Regular Session, 2014

SENATE BILL NO. 198

BY SENATOR RISER

WORKERS' COMPENSATION. Ensures compliance with requirements for mandatory workers' compensation coverage. (8/1/14)

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

1 Workers' Compensation Act, the insurer shall file, or cause to be filed, with the  
2 director a notice in such form and detail as the director may prescribe by rule and  
3 regulation. The notice shall contain the name, address, and principal occupation of  
4 the employer, the number, effective date, and expiration date of the policy, and such  
5 other information as may be required by the director. The notice shall be filed by the  
6 insurer within thirty days after the effective date of the policy **report to the National**  
7 **Council on Compensation Insurance all policy information in accordance with**  
8 **the reporting guidelines established by the National Council on Compensation**  
9 **Insurance. Proof of coverage must be filed no later than thirty days after the**  
10 **effective date of coverage and include the name of each business entity**  
11 **operating in the state of Louisiana for which coverage is provided.**

12 \* \* \*

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

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

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

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

26 ~~(5)~~**(4)** By furnishing satisfactory proof to the director of the employer's  
27 financial ability to pay such compensation. The director, pursuant to rules adopted  
28 by the office for an individual self-insured or own risk carrier, including but not  
29 limited to rules relative to security and excess coverage, shall require that an

1 employer:

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

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

8 B.(1) The director may waive the requirements of Paragraph A~~(5)~~(4) of this  
9 Section if he finds any company able to pay benefits, and that the requirements of  
10 these provisions are unnecessary. He shall establish rules which set standards for  
11 such waiver.

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

17 \* \* \*

18 §1170. Penalty for failure to secure workers' compensation insurance; assessment  
19 and collection

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

29 B. The ~~financial and compliance officer of the office of worker's~~

1            ~~compensation~~ **workers' compensation judge** shall assess ~~and collect~~ any civil  
2            penalty incurred under R.S. 23:1170(A) against any employer who fails to provide  
3            proof of compliance within fifteen days of any notice. **Any penalty assessed and**  
4            **collected pursuant to this Section shall be forwarded to the fraud administrator**  
5            **for collection.** In his discretion, the ~~financial and compliance officer~~ **fraud**  
6            **administrator** may remit, mitigate, or negotiate ~~said~~ **the** penalty if proof of the  
7            mitigating circumstances is provided within fifteen days of notice of the assessment.  
8            In determining the amount of the penalty to be assessed, or the amount agreed upon  
9            in any negotiation, consideration shall be given to the appropriateness of such  
10          penalty in light of the life of the business of the employer charged, the gravity of the  
11          violation, and the extent to which the employer charged has complied with the  
12          provisions of R.S. 23:1168, or has otherwise attempted to remedy the consequences  
13          of the said violation. Individual proceedings shall be conducted pursuant to the  
14          provisions of R.S. 23:1171.

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

19            §1171. Civil fine; hearing; appeal

20                    ~~A. The financial and compliance officer shall determine from all of the~~  
21                    ~~evidence submitted by the employer a fair and equitable resolution of the violation,~~  
22                    ~~taking into consideration any mitigating circumstances timely submitted as required~~  
23                    ~~by R.S. 23:1170. The financial and compliance officer shall assess, upon~~  
24                    ~~examination of the information submitted, a penalty commensurate with the violation~~  
25                    ~~so adjudged. However, the employer may provide additional mitigating~~  
26                    ~~circumstances or evidence to the financial and compliance officer within ten days of~~  
27                    ~~the assessment, and a reevaluation of the penalty shall be conducted. Unless a formal~~  
28                    ~~hearing is requested pursuant to the provisions of R.S. 23:1171(B), the penalty shall~~  
29                    ~~become final within thirty days of assessment. Upon becoming final, the penalty~~

1 shall be regarded as any other money judgment and may be pursued for collection  
2 as prescribed by law for any other such remedy.

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

11 §1171.1. Discontinuance of business; injunction; procedure

12 A. The director, **or his designee,** shall investigate an employer if he receives  
13 information from any person or entity that such employer has failed to provide  
14 security for compensation as required by R.S. 23:1168. If such allegations can be  
15 reasonably substantiated, **and the employer has previously been subject to a civil**  
16 **penalty pursuant to R.S. 23:1170 or criminal penalties pursuant to R.S. 23:1172,**  
17 **the director, or his designee,** and the employer has previously been fined under  
18 R.S. 23:1170 or been penalized under R.S. 23:1172, the director shall notify the  
19 employer that, unless he can show proof of compliance with R.S. 23:1168 **within**  
20 **fifteen days,** he may **shall** be subject to further fines and penalties including but not  
21 limited to an injunction against further business operations **a civil penalty pursuant**  
22 **to the provisions of R.S. 23:1170.**

23 B. ~~If within fifteen days of the employer's receipt of such notice, he has not~~  
24 ~~submitted to the director satisfactory proof of such compliance, the director shall set~~  
25 ~~the matter for hearing in accordance with the procedures set forth by law for claims~~  
26 ~~for workers' compensation benefits~~ **If such allegations can be reasonably**  
27 **substantiated and the employer has been fined under R.S. 23:1170 or penalized**  
28 **under R.S. 23:1172, the director shall notify the employer that unless he can**  
29 **show proof of compliance with R.S. 23:1168 within fifteen days, he shall be**

1 subject to further fines and penalties, including but not limited to an injunction  
2 against further business operations.

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

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

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

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

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

29 (c) The employer has willfully failed to provide security for compensation

1 as required by R.S. 23:1168 and there has been a final determination in a matter in  
2 which the employer has been fined under R.S. 23:1170 or penalized under R.S.  
3 23:1172.

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

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

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

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

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

27 ~~E.F.~~ The issuance of an order to cease and desist or the issuance of a  
28 temporary restraining order or an injunction against an employer for failure to insure  
29 or keep insurance in force as required by R.S. 23:1168 shall be in addition to any

1 civil or criminal penalties imposed by any other provision of law or Paragraph C(1)  
2 of this Section.

3 PART IV. ADMINISTRATION OF CLAIMS

4 SUBPART A. OFFICE OF WORKERS' COMPENSATION ADMINISTRATION

5 §1291. Creation, powers, and duties of the office of workers' compensation  
6 administration

7 \* \* \*

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

9 \* \* \*

10 (5) A workers' compensation fraud section, which shall administer the  
11 provisions of R.S. 23:**1170, 1171, 1171.1**, 1172, 1172.1, 1172.2, 1208, and 1295 by  
12 investigating allegations of workers' compensation fraud **and noncompliance by**  
13 **employers.**

14 \* \* \*

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

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy R. Wells.

DIGEST

Riser (SB 198)

Present law provides that an employer doing business in the state of Louisiana must provide workers' compensation coverage for the employees of the business.

Present law provides that an employer may provide statutorily required workers' compensation coverage for employees by purchasing coverage from a stock corporation, mutual association, or other concern authorized to transact the business of workers' compensation insurance in this state. Present law provides that the workers' compensation insurer shall file notice of coverage with the director of the office of workers' compensation with the Workforce Commission.

Proposed law retains present law but changes the requirement that the notice of coverage be sent to the National Council on Compensation Insurance instead of the director of the office of workers' compensation.

Proposed law provides that proof of coverage must be filed no later than 30 days after the effective date of coverage and include the name of each business entity operating in the state of La. for which coverage has been obtained.

Present law provides that in addition to any other penalty prescribed by law, any employer who fails to secure compensation required by present law shall be liable for a civil penalty,



to be assessed by the executive director or his designee, of not more than \$250.00 per employee for a first offense, and liable for a civil penalty of not more than \$500.00 per employee for a second or subsequent offense; however, the maximum civil penalty for a first offense shall not exceed \$10,000 for all related series of violations.

Proposed law retains present law but provides that a workers' compensation judge shall assess any civil penalty against an employer who fails to provide proof of compliance within 15 days of any notice.

Proposed law provides that, in addition to any penalties assessed, the workers' compensation judge shall order the employer to provide proof of workers' compensation coverage within 45 days of the order.

Present law provides that the financial and compliance officer shall determine, based upon all of the evidence submitted by the employer, a fair and equitable resolution of the violation, taking into consideration any mitigating circumstances. Present law provides that the financial and compliance officer shall assess a penalty commensurate with the violation so adjudged. Present law provides that any appeal regarding a disputed claim shall be decided in the district court in which the business of the employer is located or East Baton Rouge Parish.

Proposed law retains present law but provides that the workers' compensation judge shall conduct the hearing on the matter and an appeal may be made in the appropriate circuit court of appeal.

Present law provides that the director shall investigate an employer if he receives information from any person or entity that such employer has failed to provide workers' compensation coverage for his employees. Present law provides that if such allegations can be reasonably substantiated, the director, shall notify the employer that, unless he can show proof of coverage, he may be subject to further fines and penalties including but not limited to an injunction against further business operations.

Proposed law retains present law but provides that if such allegations can be reasonably substantiated and the employer has been fined or penalized under, the director, or his designee, shall notify the employer that unless he can show proof of coverage within 15 days, the employer will be subject to further fines and penalties including but not limited to an injunction against further business operations.

Proposed law provides that if within 15 days of the employer's receipt of such notice he has not submitted to the director satisfactory proof of such compliance, the director or his designee shall request the workers' compensation judge of any district where the employer does business to set the matter for hearing and the workers' compensation judge shall issue a rule to show cause to the employer why he should not be fined or penalized for failure to show proof of workers' compensation coverage.

Effective August 1, 2014.

(Amends R.S. 23:1168(A)(1) and (4) and (B), 1170(A) and (B), 1171, 1171.1, and 1291(C)(5); adds R.S. 23:1170(C); repeals R.S. 23:1168(A)(5))

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Makes technical corrections, including citation.