

1 ~~dollars per calendar day for each day in which any and all compensation or medical~~
2 ~~benefits remain unpaid or such consent is withheld, together with reasonable attorney~~
3 ~~fees for each disputed claim; however, the fifty dollars per calendar day **provided**~~
4 **that such** penalty shall not exceed a maximum of two thousand dollars in the
5 aggregate for any claim. The maximum amount of penalties which may be imposed
6 at a hearing on the merits regardless of the number of penalties which might be
7 imposed under this Section is eight thousand dollars. **The maximum amount of**
8 **attorney fees which may be imposed at a hearing on the merits regardless of the**
9 **number of penalties which might be imposed under this Section is eight**
10 **thousand dollars, excluding any additional fees which may be paid pursuant to**
11 **R.S. 23:1141.** An award of penalties and attorney fees at any hearing on the merits
12 shall be res judicata as to any and all claims for which penalties may be imposed
13 under this Section which precedes the date of the hearing. Penalties shall be assessed
14 in the following manner:

15 (1) Such penalty and attorney fees shall be assessed against either the
16 employer or the insurer, depending upon fault. No workers' compensation insurance
17 policy shall provide that these sums shall be paid by the insurer if the workers'
18 compensation judge determines that the penalty and attorney fees are to be paid by
19 the employer rather than the insurer.

20 (2) This Subsection shall not apply if the claim is reasonably controverted or
21 if such nonpayment results from conditions over which the employer or insurer had
22 no control.

23 (3) Except as provided in Paragraph (4) of this Subsection, any additional
24 compensation paid by the employer or insurer pursuant to this Section shall be paid
25 directly to the employee.

26 (4) In the event that the health care provider prevails on a claim for payment
27 of his fee, penalties as provided in this Section and reasonable attorney fees based
28 upon actual hours worked may be awarded and paid directly to the health care
29 provider. This Subsection shall not be construed to provide for recovery of more than

1 one penalty or attorney fee.

2 (5) No amount paid as a penalty or attorney fee under this Subsection shall
3 be included in any formula utilized to establish premium rates for workers'
4 compensation insurance.

5 **(6) This Subsection shall not apply if the employee has failed to submit**
6 **amicable demand for the benefit in dispute to the employer or insurer, in**
7 **writing with sufficient particularity and proof thereof, or if following receipt of**
8 **the employee's amicable demand, the employer or insurer pays the disputed**
9 **benefit as required by this Chapter within ten business days.**

10 * * *

11 §1201.1. Controversion of compensation and medical benefits

12 A. Upon the first payment of ~~compensation~~ **indemnity benefits** or upon any
13 modification, suspension, termination, or controversion of compensation or medical
14 benefits for any reason, including but not limited to issues of medical causation,
15 compensability of the claim, or issues arising out of R.S. 23:1121, 1124, 1208, and
16 1226, the employer or payor who has been notified of the claim, shall do all of the
17 following:

18 (1) Prepare a "Notice of Modification, Suspension, Termination, or
19 Controversion of Compensation and/or Medical Benefits".

20 (2) Send the notice of the initial indemnity payment to the injured employee
21 **any time within ten business days of the first payment of indemnity benefits by**
22 **either U.S. Regular Mail, U.S. Certified Mail, email, facsimile, hand-delivery,**
23 **or any commercial carrier express delivery** ~~on the same day as the first payment~~
24 ~~of compensation is made by the payor~~ after the payor has received notice of the
25 claim from the employer.

26 (3) Send a copy of the notice of the initial payment of indemnity to the office
27 **any time** within ten **business** days **of the first payment of indemnity benefits by**
28 **either U.S. Regular Mail, U.S. Certified Mail, email, facsimile, hand-delivery,**
29 **or any commercial carrier express delivery** from the date the original notice was

1 sent to the injured employee or by facsimile to the injured employee's representative.

2 (4) Send the "Notice of Payment, Modification, Suspension, Termination, or
3 Controversion of Compensation and/or Medical Benefits" to the injured employee
4 ~~by certified mail~~; **any time within ten business days to the employee by either**
5 **U.S. Regular Mail, U.S. Certified Mail, email, facsimile, hand-delivery, or any**
6 **commercial carrier express delivery**, to the address at which the employee is
7 receiving payments of compensation, ~~on or before~~ **within ten days of** the effective
8 date of a modification, suspension, termination, or controversion.

9 (5) Send a copy of the "Notice of Payment, Modification, Suspension,
10 Termination, or Controversion of Compensation and/or Medical Benefits" to the
11 office ~~on the same business day as sent to the employee or to his representative~~ **any**
12 **time within ten business days of the effective date of a modification, suspension,**
13 **termination or controversion by either U.S. Regular Mail, U.S. Certified Mail,**
14 **email, facsimile, hand-delivery, or any commercial carrier express delivery.**

15 * * *

16 D. If the injured employee is represented by an attorney, the notice shall also
17 be provided to the employee's representative ~~by facsimile~~ **any time within ten**
18 **business days of the effective date of a modification, suspension, termination or**
19 **controversion by either U.S. Regular Mail, U.S. Certified Mail, email, facsimile,**
20 **hand-delivery, or any commercial carrier express delivery.** Proof that the notice
21 was sent to the employee's representative by ~~facsimile~~ **either U.S. Regular Mail,**
22 **U.S. Certified Mail, email, facsimile, hand-delivery, or any commercial carrier**
23 **express delivery** shall be prima facie evidence of compliance with Subsection A of
24 this Section.

25 * * *

26 F.(1)(a) Any injured employee or his representative who disagrees with any
27 information provided on the notice form sent by the employer or payor, shall notify
28 the employer or payor of the basis for disagreement by returning the form to the
29 employer or payor as provided on the form, or by letter of amicable demand **within**

1 ten business days from first receipt of the form referenced in Subparagraph (b)
2 of this paragraph, and provide any amounts of compensation or medical benefits
3 he believes appropriate.

4 (b) If no first payment of compensation has been made on the claim, any
5 injured employee or his representative who contends that entitlement to
6 compensation or medical benefits exists shall notify the employer or payor by
7 letter of amicable demand specifying the basis for such contention of
8 entitlement to compensation or medical benefits.

9 (2) No disputed claim shall be filed regarding any such disagreement or
10 entitlement to compensation or medical benefits unless the notice required by this
11 Section has been sent to the employer or payor either who initially sent the notice
12 or was provided a letter of amicable demand pursuant to Subparagraph (1)(b)
13 of this Subsection above.

14 G.(1) If the employer or the payor provides the benefit that the employee
15 claims is due, including any arrearage, on the returned form or letter of amicable
16 demand within ~~seven~~ ten business days of receipt of the employee's demand, the
17 employer or payor shall not be subject to any claim for any penalties or attorney fees
18 arising from the disputed payment, modification, suspension, termination, or
19 controversy.

20 * * *

21 ~~I.(1) An employer or payor who has not complied with the requirements set~~
22 ~~forth in Subsection A through E of this Section or has not initially accepted the claim~~
23 ~~as compensable, subject to further investigation and subsequent controversy shall~~
24 ~~not be entitled to a preliminary determination. An employer or payor who is not~~
25 ~~entitled to a preliminary determination or who is so entitled but fails to request a~~
26 ~~preliminary determination may be subject to penalties and attorney fees pursuant to~~
27 ~~R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of~~
28 ~~this Section.~~

29 (a) An employer or payor shall be entitled to a preliminary

1 determination regarding the notice of the initial indemnity payment if the
2 employer or payor has complied with the requirements of Paragraphs A(1)
3 through (3) and Paragraph (D) of this Section.

4 (b) An employer or payor shall be entitled to a preliminary
5 determination regarding any notice of modification, suspension, termination,
6 or controversion if the employer or payor has complied with the requirements
7 of Paragraphs (A)(1), (A)(4) and (A)(5), and (D) of this Section, regardless of
8 whether the employer or payor was entitled to a preliminary determination
9 pursuant to Paragraph (1)(a) or (c) of this Subsection.

10 (c) An employer or payor shall be entitled to a preliminary
11 determination regarding any amicable demand provided pursuant to
12 Paragraph (F)(1)(b) of this Section, regardless of whether the employer or
13 payor was entitled to a preliminary determination pursuant to Paragraph (1)(a)
14 or (b) of this Subsection.

15 (d) An employer or payor who is not entitled to a preliminary
16 determination or who is so entitled but fails to request a preliminary
17 determination may be subject to penalties and attorney fees pursuant to R.S.
18 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8)
19 of this Section.

20 (2) Any dispute by the employee or his representative as to the request
21 for a preliminary determination hearing by the employer or payor must be filed
22 by a formal motion with the court within ten business days of the employer's or
23 payor's motion with the court requesting a preliminary determination hearing.
24 Failure to file a motion disputing the request for a preliminary determination
25 as required by this subparagraph will bar any objection to the right of the
26 employer or payor to a preliminary determination hearing. If disputed by the
27 parties, upon a rule to show cause held prior to the preliminary determination or any
28 hearing held pursuant to this Section, the workers' compensation judge shall
29 determine whether the employer is in compliance.

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§1314. Necessary allegations; dismissal of premature petition; dispute of benefits

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E.(1) Notwithstanding any other provision of this Section, the employer or payor shall be permitted to file a disputed claim against an employee, his dependent, or beneficiary ~~only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud as provided in R.S. 23:1208 which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary, or when the employer or payor is an aggrieved party appealing a decision of the medical director pursuant to R.S. 23:1203.1(K).~~

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Yoursheka D. Butler.

DIGEST

SB 319 Original

2024 Regular Session

Seabaugh

Present law provides that failure to pay workers' compensation benefits or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by present law will result in the assessment of a penalty in an amount up to the greater of 12% of any unpaid compensation or medical benefits, or \$50 per calendar day for each day in which any and all compensation or medical benefits remain unpaid or consent is withheld, together with reasonable attorney fees for each disputed claim, up to a maximum of \$2,000 in the aggregate for any claim.

Proposed law makes the penalty 12% of any unpaid compensation and deletes dollar amounts as possible penalties, and otherwise retains present law. Proposed law further provides that the maximum amount of attorney fees which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is \$8,000, excluding any additional fees which may be paid pursuant to certain provisions of present law.

Present law provides that an award of penalties and attorney fees at any hearing on the merits will be res judicata as to any and all claims for which penalties may be imposed under present law which precedes the date of the hearing. Present law further sets forth how penalties are to be assessed.

Proposed law retains present law and adds that present law does not apply if the employee has failed to submit amicable demand for the benefit in dispute to the employer or insurer, in writing with sufficient particularity and proof thereof, or if following receipt of the employee's amicable demand, the employer or insurer pays the disputed benefit as required by present law within 10 business days.

Present law provides that upon first payment of benefits or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issues of medical causation or compensability of the

claim, or issues arising out of present law, the employer or payor who has been notified of the claim, must prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" and send the notice of the initial indemnity payment to the injured employee on the same day as the first payment of compensation.

Proposed law provides that present law notice is to be sent at any time within 10 business days of the first payment of indemnity benefits by either U.S. Regular Mail, U.S. Certified Mail, email, facsimile, hand delivery, or any commercial carrier express delivery.

Proposed law otherwise retains present law.

Present law further provides relative to the sending of notice to various parties.

Proposed law requires the notice be sent by either U.S. Regular Mail, U.S. Certified Mail, email, facsimile, hand delivery, or any commercial carrier express delivery, and otherwise retains present law.

Proposed law provides that if no first payment of compensation has been made on the claim, any injured employee or his representative who contends that entitlement to compensation or medical benefits exists must notify the employer or payor by letter of amicable demand specifying the basis for such contention of entitlement to compensation or medical benefits.

Present law provides that if the employer or the payor provides the benefit that the employee claims is due, including any arrearage, on the returned form or letter of amicable demand within seven days of receipt of the employee's demand, the employer or payor will not be subject to any claim for any penalties or attorney fees arising from the disputed payment, modification, suspension, termination, or controversion.

Proposed law changes the time for making amicable demand from seven days to 10 days and otherwise retains present law.

Present law provides that an employer or payor who has not complied with the certain present law requirements or has not initially accepted the claim as compensable, subject to further investigation and subsequent controversion, is not be entitled to a preliminary determination. Present law further provides that an employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees at a trial on the merits or hearing held pursuant to present law.

Proposed law deletes present law and adds provisions relative to when an employer or payor is entitled to a preliminary determination regarding the notice of the initial indemnity payment, any notice of modification, suspension, termination, or controversion, and any amicable demand.

Proposed law provides relative to an employer or payor who is not entitled to a preliminary determination.

Proposed law provides that any dispute by the employee or his representative as to the request for a preliminary determination hearing by the employer or payor must be filed by a formal motion with the court within 10 business days of the employer's or payor's motion with the court requesting a preliminary determination hearing.

Present law provides that the employer or payor must be permitted to file a disputed claim against an employee, his dependent, or beneficiary only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary, or when the employer or payor is an aggrieved party appealing a decision of the medical

director.

Proposed law deletes present law requiring an allegation of fraud and otherwise retains present law.

Effective August 1, 2024.

(Amends R.S. 23:1201(F), 1201.1(A), (D), (F), (G)(1), and (I) and 1314(E)(1))