
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 17, 1998 Revised: _____

Subject: Workers' Compensation (Rule Authorizing Bill)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Section 120.536(2), F.S., requires the Legislature to determine whether specific legislation should be enacted authorizing rules, or portions thereof, identified by an agency as exceeding statutory authority but deemed necessary by the agency for the administration of a program. The Division of Workers' Compensation of the Department of Labor and Employment Security reported such rules to the Joint Administrative Procedures Committee. The committee substitute addresses the division's rulemaking authority relating to:

- ◆ Election of exemption
- ◆ Impairment income and wage-loss benefits
- ◆ Supplemental income benefits
- ◆ Temporary disability
- ◆ Permanent total and permanent total supplemental benefits
- ◆ Wage statement documentation
- ◆ Employee Assistance and Ombudsman Office
- ◆ Monitoring and auditing
- ◆ Compensation notice
- ◆ Retroactive cancellation
- ◆ Special Disability Trust Fund
- ◆ Preferred Worker Program, and
- ◆ Reporting requirements

Rulemaking authority related to the payment of funeral expenses is not authorized in the committee substitute; however, s. 440.16, F.S., was amended to require payment within 14 days of receipt of the bill.

This bill substantially amends the following sections of the Florida Statutes: 440.05, 440.13, 440.16, 440.185, 440.191, 440.20, 440.40, 440.42, and 440.49.

II. Present Situation:

During the 1996 legislative session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority, if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted, pursuant to s. 120.536, F.S.

Rules not included on the list submitted by the agency, along with rules adopted after October 1, 1996, could be challenged on grounds of exceeding the agencies rulemaking authority after November 1, 1997. Rules included on the submitted list may not be challenged on such grounds until July 1, 1999. Thus, while the statutes direct the 1998 Legislature to consider whether legislation authorizing identified rules should be enacted and while agencies must begin the rule repeal process for identified rules before January 1, 1999, rules identified as exceeding the new rulemaking authority are not subject to challenge on such grounds until July 1, 1999, after the 1999 legislative session.

The following rules identified by the division as exceeding statutory and deemed by the division as necessary are addressed in the bill in the sections referenced:

Section 1:

38F-6.009 (1)(b), (d), (h) and 6.012 (1)-(6), Election of Exemption and Revocation Forms and Instructions

The rules adopts forms required to be used by employers, including: election of exemptions, notice of election of coverage, and revocation of election to be exempt. The rule also adopts forms and procedures for the issuance by the division of a certificate of exemption from coverage under workers' compensation. The committee substitute also specifies forms and procedures for revocation, notice of election of coverage, and issuance of the certificate of the election of exemption.

Section 2:

38F-3.0192, 3.018, 3.019, 3.0191, 24.027, and 3.0193.

Impairment Income Benefits, Wage-Loss Benefits, Temporary Disability Benefits, Supplemental Income Benefits, and Permanent Total and Permanent Total Supplemental Benefits

The rules provide definitions of terms, procedures, and forms governing the payment of such.

The rule pertaining to permanent total and permanent total supplemental benefits provides that the division has first priority in taking any available social security offsets on dates of accidents occurring before July 1, 1984. This provision was not addressed in the Senate Bill, as filed.

Section 4:

38F-3.0212 Risk Class Code/Standard Industry Code Report, 38F-3.0213 Change in Claims Administration, and 38F-3.002 and 24.0231(1)(b) and (c), Definitions and Penalties for Improper Filing Practices

These rules provide definitions of terms used, forms and procedures, and penalties for not filing required reports, including a wage statement and other reports.

Section 5:

38F-26.002, .003, and .004 Employee Assistance Office

The rules provides definitions of terms, forms, and procedures necessary for the administration of the office.

Section 6:

38F-24.022, .0221, and .0222, Audits by the Division and Corrective Action Plans

The rule provides forms and procedures for assessing carriers' compliance with ch. 440, F.S., through audits and corrective action plans. The division may by rule establish audit procedures for the Automated Carrier Performance System.

Section 7:

38F-6.007(1) Compensation Notice

The rule requires carriers and self-insurance servicing agents to furnish employers with printed workers' compensation coverage notices in a specified format and requires employers to post the notices in the place of employment. The Senate Bill, as filed, did not address the format of such notices.

Section 8:

38F-6.008 (2) and (4) Termination of Workers' Compensation Insurance

The rule provides forms and procedures for notifying the division and employer of termination of coverage and retroactive cancellation due to duplicate or dual coverage. The Senate Bill, as filed, authorized the division to prescribe by retroactive cancellation. The committee substitute authorizes the division by rule to prescribe the form and manner of such notices.

Section 9:

38F-10.065, .066, .007, .009, .011, .012, .013, .014, .015, .016, .017, .018, .and 019, Special Disability Trust Fund and 38F-11.002, .003, .004, .005, .006, .007, .008, .009, .010, and.011, The Preferred Worker Program

The rules provide definitions of terms, forms, and procedures necessary for the administration of the fund and the Preferred Worker Program, respectively. Rules relating to the Preferred Worker Program specify the time within certain documentation must be filed with the division to be eligible for participation in the program. The Senate Bill, as filed, did not address the schedule for submission of documents for participation.

Rule 38F-3.0085, Funeral Expenses Bill, authorized in the Senate Bill, as filed, was not authorized in the committee substitute. The rule requires the carrier to pay funeral expenses within 14 days after receiving the bill and requires the carrier to report payment to the division. However, s. 440.16, F.S., was amended to require payment within 14 days after receipt of the bill, see section 3 of the committee substitute.

III. Effect of Proposed Changes:

Section 1. Amends s. 440.04, F.S., relating to the election of exemption of coverage, to authorize the division to prescribe by rule forms and procedures for filing an election of exemption, revocation of election to be exempt, and notice of election of coverage for all employers and require specified forms to be submitted by all employers in filing for the election of exemption. The division may by rule prescribe forms and procedures for issuing a certificate of the election of exemption.

Section 2. Amends s. 440.15, F.S., relating to compensation for disability, to authorize the division to prescribe by rule the method of payment of wage loss and impairment benefits, supplemental benefits, and temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

The section also is amended to authorize the division to prescribe by rule the method for calculating and administering the offset of benefits payable under ch. 440, F.S., and under 42 U.S.C. ss. 402 and 423.

The division shall have first priority in taking any available social security offsets on dates of accidents occurring before July 1, 1984.

Section 3. Amends s. 440.16, F.S., relating to compensation for death, to require the employer to pay within 14 days of receipt, the actual funeral expenses, not to exceed \$5,000.

Section 4. Amends s. 440.15, F.S., relating to notice of injury or deaths and reports, to authorize the division require wage statements to be filed the employer or carrier at such times and in such manner as the division may prescribe. The division is authorized by rule to prescribe forms and procedures governing the submission of change in administration of claims and the risk

class code and standard industry code report for all lost time and denied lost-time cases. The division is also authorized by rule to define terms that are necessary for the effective administration of this section.

Section 5. Amends s. 440.191, F.S., relating to the Employee Assistance and Ombudsman Office, to authorize the division to prescribe by rule definitions that are necessary for the effective administration of this section. The division is authorized to prescribe by rule the forms and procedures for administering requests for assistance and determining the method to be used for purposes of calculating the 30-day period for resolution.

Section 6. Amends s. 440.20, F.S., relating to the time for payment of compensation and penalties for late payment, to authorize the division to establish procedures, by rule, forms and procedures for corrective-action plans and for auditing carriers. The division may by rule establish audit procedures for the Automated Carrier Performance System.

Section 7. Amends s. 440.40, F.S., relating to compensation notice, to authorize the division by rule to prescribe the form of the notices and require carriers to provide the notices to policyholders.

Section 8. Amends s. 440.42, F.S., relating to insurance policies and duplicate or dual coverage, to authorize the division to prescribe by rule the manner in which a carrier will serve notice of cancellation instant with the employer. The division may by rule prescribe the content of the notice of retroactive cancellation, including the time, place, and manner in which the notice of cancellation is to be served.

Section 9. Amends s. 440.49, F.S., relating to the Special Disability Trust Fund (Fund), to allow the division to prescribe by rule additional definitions that are necessary for the effective administration of this section. The division may by rule require specific forms and procedures for the administration and processing of claims made through the Fund.

Also, the division may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The division may by rule prescribe the schedule for submission of forms for participation in the program.

Section 10. This act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute codifies existing definitions of terms presently used in the rules and forms and procedures presently required by the division for the administration of ch. 440, F.S.; therefore, the committee substitute should not impose a fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.