

STORAGE NAME: s1342s1.fs

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1342

RELATING TO: Workers' Compensation (Rule Authorizing Bill)

SPONSOR(S): Banking and Insurance Committee and Senator Diaz-Balart

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
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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; instead, the bill would amend s. 440.16, F.S., to require payment within 14 days of receipt of the bill.

This bill 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.

The bill has no fiscal impact on state or local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Revised Standards for Rulemaking Under the New APA

In 1996, the Florida Legislature adopted a comprehensive rewrite of the Administrative Procedures Act (APA).¹ Among many other changes, the revised APA modified the standards which authorize agencies to make rules. The 1996 revisions were designed to require a closer relationship between an agency rule and the implementing statute, thereby improving legislative oversight of agency rulemaking.

Prior to the revisions, a line of court decisions held that agencies had wide discretion in adopting rules. Under some of these cases, a rule was held to not exceed the legislative grant of rulemaking authority if it was reasonably related to the purposes of the enabling legislation and was not arbitrary or capricious. Department of Corrections v. Hargrove, 615 So.2d 199 (Fla. 1st DCA 1993); General Tel. Co. of Florida v. Florida Public Serv. Comm'n, 446 So.2d 1063 (Fla.1984); Florida League of Cities v. Department of Environmental Regulation, 603 So.2d 1363 (Fla. 1st DCA 1992). Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Therefore, under this line of decisions, agencies had wide discretion in adopting rules, whether the statutory basis for the rule was clearly conferred or implied from the enabling statute.

In revising the APA and creating §120.536, the Legislature specifically overturned this line of cases and imposed a stricter standard for authorizing agencies to make rules. Under the new APA, an agency may only adopt a rule that implements a specific law.² Furthermore, only rules that *implement, interpret or make specific* the particular powers and duties granted by the enabling statute will be deemed valid. Therefore, agencies now need more than a general grant of rulemaking authority or a statement of general legislative intent in order to implement a rule. Instead, rules must be based on specific grants of powers and may not address subjects on which the Legislature was silent.

¹ See CS/SBs 2290 and 2288.

² 120.536(1) states:

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

Review for Compliance with the New Standard

As a means to address existing rules that may exceed the authority of an implementing statute, all agencies were directed to identify those rules existing prior to October 1, 1996 that exceeded the new standard for rulemaking.³ Agencies were required to report the rules identified as exceeding rulemaking authority to the Joint Administrative Procedures Committee (JAPC) by October 1, 1997. Rules that were not identified and reported to JAPC could be challenged under the new standard beginning November 1, 1997. However, rules that were identified and reported were shielded from challenge under the new standard until the Legislature had the opportunity in the 1998 Regular Session to consider both whether the identified rules are necessary and whether authorizing legislation should be enacted.

After the 1998 session, agencies must initiate repeal procedures for those rules reported to JAPC, but not authorized in the session, by January 1, 1999. The shield protecting agency's rules identified and reported to JAPC will be removed on July 1, 1999, and JAPC or substantially affected parties may petition for the repeal of any remaining rule identified as exceeding rulemaking authority for which authorizing legislation was not enacted.

Rules Identified by the Department of Labor and Employment Security, Division of Workers' Compensation

The following rules were identified by the Division of Workers' Compensation as exceeding statutory authority and deemed necessary for the administration of Chapter 440, F.S.:

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

³ 120.536(2) states:

(2) By October 1, 1997, each agency shall provide to the Administrative Procedures Committee a listing of each rule, or portion thereof, adopted by that agency before October 1, 1996, which exceeds the rulemaking authority permitted by this section. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency shall also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee shall combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 1999, the Administrative Procedures Committee shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding the rulemaking authority permitted by this section for which proceedings to repeal the rule have not been initiated. As of July 1, 1999, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

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.

- 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.

- 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.

- 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.

- 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.

- 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.

- 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 authorizes the division by rule to prescribe the form and manner of such notices.

- 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.

- 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.

B. EFFECT OF PROPOSED CHANGES:

Florida Statutes would provide specific statutory authority for the Division of Workers' Compensation to enact specific rules for the administration of Chapter 440.

The Division of Workers' Compensation would have first priority in taking any available social security offset.

Employers would be required to pay within 14 days of receipt, funeral expenses not to exceed \$5,000.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The committee substitute provides specific statutory authority for rules that are currently in effect, but deemed to be lacking specific statutory authority.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. The committee substitute provides specific statutory authority for rules that are currently in effect, but deemed to be lacking specific statutory authority. Therefore, no new responsibilities or obligations should be created.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill 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.

E. SECTION-BY-SECTION RESEARCH:

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 to 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 instanter 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.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None. The committee substitute provides specific statutory authority for rules currently in effect, which were identified by the Division of Workers' Compensation as lacking specific statutory authority. Consequently, there should be no fiscal impact.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None. The committee substitute provides specific statutory authority for rules currently in effect, which were identified by the Division of Workers' Compensation as lacking specific statutory authority. Consequently, the committee substitute should not impact the private sector.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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