

By Senator Diaz-Balart

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A bill to be entitled  
An act relating to rulemaking authority of the  
Division of Workers' Compensation (RAB);  
amending ss. 440.05, 440.13, 440.16, 440.185,  
440.191, 440.20, 440.40, 440.42, 440.49,  
440.59, F.S.; extending rulemaking authority to  
the Division of Workers' Compensation;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 440.05,  
Florida Statutes, to read:

440.05 Election of exemption; revocation of election;  
notice; certification.--

(7) The division may by rule prescribe procedures for  
filing an election of exemption for all employers and require  
specified forms to be submitted by all employers in filing for  
the election of exemption.

Section 2. Paragraphs (a) and (b) of subsection (3),  
paragraph (b) of subsection (4), and paragraph (b) of  
subsection (10) of section 440.15, Florida Statutes, are  
amended to read:

440.15 Compensation for disability.--Compensation for  
disability shall be paid to the employee, subject to the  
limits provided in s. 440.12(2), as follows:

(3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

(a) Impairment benefits.--

1. Once the employee has reached the date of maximum  
medical improvement, impairment benefits are due and payable

1 within 20 days after the carrier has knowledge of the  
2 impairment.

3 2. The three-member panel, in cooperation with the  
4 division, shall establish and use a uniform permanent  
5 impairment rating schedule. This schedule must be based on  
6 medically or scientifically demonstrable findings as well as  
7 the systems and criteria set forth in the American Medical  
8 Association's Guides to the Evaluation of Permanent  
9 Impairment; the Snellen Charts, published by American Medical  
10 Association Committee for Eye Injuries; and the Minnesota  
11 Department of Labor and Industry Disability Schedules. The  
12 schedule should be based upon objective findings. The schedule  
13 shall be more comprehensive than the AMA Guides to the  
14 Evaluation of Permanent Impairment and shall expand the areas  
15 already addressed and address additional areas not currently  
16 contained in the guides. On August 1, 1979, and pending the  
17 adoption, by rule, of a permanent schedule, Guides to the  
18 Evaluation of Permanent Impairment, copyright 1977, 1971,  
19 1988, by the American Medical Association, shall be the  
20 temporary schedule and shall be used for the purposes hereof.  
21 For injuries after July 1, 1990, pending the adoption by  
22 division rule of a uniform disability rating schedule, the  
23 Minnesota Department of Labor and Industry Disability Schedule  
24 shall be used unless that schedule does not address an injury.  
25 In such case, the Guides to the Evaluation of Permanent  
26 Impairment by the American Medical Association shall be used.  
27 Determination of permanent impairment under this schedule must  
28 be made by a physician licensed under chapter 458, a doctor of  
29 osteopathic medicine licensed under chapters 458 and 459, a  
30 chiropractor licensed under chapter 460, a podiatrist licensed  
31 under chapter 461, an optometrist licensed under chapter 463,

1 or a dentist licensed under chapter 466, as appropriate  
2 considering the nature of the injury. No other persons are  
3 authorized to render opinions regarding the existence of or  
4 the extent of permanent impairment.

5 3. All impairment income benefits shall be based on an  
6 impairment rating using the impairment schedule referred to in  
7 subparagraph 2. Impairment income benefits are paid weekly at  
8 the rate of 50 percent of the employee's average weekly  
9 temporary total disability benefit not to exceed the maximum  
10 weekly benefit under s. 440.12. An employee's entitlement to  
11 impairment income benefits begins the day after the employee  
12 reaches maximum medical improvement or the expiration of  
13 temporary benefits, whichever occurs earlier, and continues  
14 until the earlier of:

15 a. The expiration of a period computed at the rate of  
16 3 weeks for each percentage point of impairment; or

17 b. The death of the employee.

18 4. After the employee has been certified by a doctor  
19 as having reached maximum medical improvement or 6 weeks  
20 before the expiration of temporary benefits, whichever occurs  
21 earlier, the certifying doctor shall evaluate the condition of  
22 the employee and assign an impairment rating, using the  
23 impairment schedule referred to in subparagraph 2.

24 Compensation is not payable for the mental, psychological, or  
25 emotional injury arising out of depression from being out of  
26 work. If the certification and evaluation are performed by a  
27 doctor other than the employee's treating doctor, the  
28 certification and evaluation must be submitted to the treating  
29 doctor, and the treating doctor must indicate agreement or  
30 disagreement with the certification and evaluation. The  
31 certifying doctor shall issue a written report to the

1 division, the employee, and the carrier certifying that  
2 maximum medical improvement has been reached, stating the  
3 impairment rating, and providing any other information  
4 required by the division. If the employee has not been  
5 certified as having reached maximum medical improvement before  
6 the expiration of 102 weeks after the date temporary total  
7 disability benefits begin to accrue, the carrier shall notify  
8 the treating doctor of the requirements of this section.

9 5. The carrier shall pay the employee impairment  
10 income benefits for a period based on the impairment rating.

11 6. The division may by rule specify the method of  
12 payment of wage loss and impairment benefits for dates of  
13 accidents before January 1, 1994, and for dates of accidents  
14 on or after January 1, 1994.

15 (b) Supplemental benefits.--

16 1. All supplemental benefits must be paid in  
17 accordance with this subsection. An employee is entitled to  
18 supplemental benefits as provided in this paragraph as of the  
19 expiration of the impairment period, if:

20 a. The employee has an impairment rating from the  
21 compensable injury of 20 percent or more as determined  
22 pursuant to this chapter;

23 b. The employee has not returned to work or has  
24 returned to work earning less than 80 percent of the  
25 employee's average weekly wage as a direct result of the  
26 employee's impairment; and

27 c. The employee has in good faith attempted to obtain  
28 employment commensurate with the employee's ability to work.

29 2. If an employee is not entitled to supplemental  
30 benefits at the time of payment of the final weekly impairment  
31 income benefit because the employee is earning at least 80

1 percent of the employee's average weekly wage, the employee  
2 may become entitled to supplemental benefits at any time  
3 within 1 year after the impairment income benefit period ends  
4 if:

5       a. The employee earns wages that are less than 80  
6 percent of the employee's average weekly wage for a period of  
7 at least 90 days;

8       b. The employee meets the other requirements of  
9 subparagraph 1.; and

10       c. The employee's decrease in earnings is a direct  
11 result of the employee's impairment from the compensable  
12 injury.

13       3. If an employee earns wages that are at least 80  
14 percent of the employee's average weekly wage for a period of  
15 at least 90 days during which the employee is receiving  
16 supplemental benefits, the employee ceases to be entitled to  
17 supplemental benefits for the filing period. Supplemental  
18 benefits that have been terminated shall be reinstated when  
19 the employee satisfies the conditions enumerated in  
20 subparagraph 2. and files the statement required under  
21 subparagraph 5. Notwithstanding any other provision, if an  
22 employee is not entitled to supplemental benefits for 12  
23 consecutive months, the employee ceases to be entitled to any  
24 additional income benefits for the compensable injury. If the  
25 employee is discharged within 12 months after losing  
26 entitlement under this subsection, benefits may be reinstated  
27 if the employee was discharged at that time with the intent to  
28 deprive the employee of supplemental benefits.

29       4. During the period that impairment income benefits  
30 or supplemental income benefits are being paid, the carrier  
31 has the affirmative duty to determine at least annually

1 whether any extended unemployment or underemployment is a  
2 direct result of the employee's impairment. To accomplish this  
3 purpose, the division may require periodic reports from the  
4 employee and the carrier, and it may, at the carrier's  
5 expense, require any physical or other examinations,  
6 vocational assessments, or other tests or diagnoses necessary  
7 to verify that the carrier is performing its duty. Not more  
8 than once in each 12 calendar months, the employee and the  
9 carrier may each request that the division review the status  
10 of the employee and determine whether the carrier has  
11 performed its duty with respect to whether the employee's  
12 unemployment or underemployment is a direct result of  
13 impairment from the compensable injury.

14           5. After the initial determination of supplemental  
15 benefits, the employee must file a statement with the carrier  
16 stating that the employee has earned less than 80 percent of  
17 the employee's average weekly wage as a direct result of the  
18 employee's impairment, stating the amount of wages the  
19 employee earned in the filing period, and stating that the  
20 employee has in good faith sought employment commensurate with  
21 the employee's ability to work. The statement must be filed  
22 quarterly on a form and in the manner prescribed by the  
23 division. The division may modify the filing period as  
24 appropriate to an individual case. Failure to file a statement  
25 relieves the carrier of liability for supplemental benefits  
26 for the period during which a statement is not filed.

27           6. The carrier shall begin payment of supplemental  
28 benefits not later than the seventh day after the expiration  
29 date of the impairment income benefit period and shall  
30 continue to timely pay those benefits. The carrier may request  
31 a mediation conference for the purpose of contesting the

1 employee's entitlement to or the amount of supplemental income  
2 benefits.

3           7. Supplemental benefits are calculated quarterly and  
4 paid monthly. For purposes of calculating supplemental  
5 benefits, 80 percent of the employee's average weekly wage and  
6 the average wages the employee has earned per week are  
7 compared quarterly. For purposes of this paragraph, if the  
8 employee is offered a bona fide position of employment that  
9 the employee is capable of performing, given the physical  
10 condition of the employee and the geographic accessibility of  
11 the position, the employee's weekly wages are considered  
12 equivalent to the weekly wages for the position offered to the  
13 employee.

14           8. Supplemental benefits are payable at the rate of 80  
15 percent of the difference between 80 percent of the employee's  
16 average weekly wage determined pursuant to s. 440.14 and the  
17 weekly wages the employee has earned during the reporting  
18 period, not to exceed the maximum weekly income benefit under  
19 s. 440.12.

20           9. The division may by rule specify the method of  
21 payment of supplemental benefits for dates of accidents before  
22 January 1, 1994 and for dates of accidents on or after January  
23 1, 1994.

24           (4) TEMPORARY PARTIAL DISABILITY.--

25           (b) Such benefits shall be paid during the continuance  
26 of such disability, not to exceed a period of 104 weeks, as  
27 provided by this subsection and subsection (2). Once the  
28 injured employee reaches the maximum number of weeks,  
29 temporary disability benefits cease and the injured worker's  
30 permanent impairment must be determined. The division may by  
31 rule specify the method of payment of temporary disability

1 benefits for dates of accidents before January 1, 1994, and  
2 for dates of accidents on or after January 1, 1994.

3 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER  
4 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE  
5 ACT.--

6 (b) If the provisions of 42 U.S.C. s. 424(a) are  
7 amended to provide for a reduction or increase of the  
8 percentage of average current earnings that the sum of  
9 compensation benefits payable under this chapter and the  
10 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,  
11 the amount of the reduction of benefits provided in this  
12 subsection shall be reduced or increased accordingly. The  
13 division may by rule specify the method for calculating and  
14 administering the offset of benefits payable under this  
15 chapter and benefits payable under 42 U.S.C. ss. 402 and 423.

16 Section 3. Subsection (8) is added to section 440.16,  
17 Florida Statutes, to read:

18 440.16 Compensation for death.--

19 (8) The division may by rule specify the time within  
20 which funeral expenses are to be paid.

21 Section 4. Subsection (5) of section 440.185, Florida  
22 Statutes, is amended and subsection (10) is added to that  
23 section to read:

24 440.185 Notice of injury or death; reports; penalties  
25 for violations.--

26 (5) Additional reports with respect to such injury and  
27 of the condition of such employee, including copies of medical  
28 reports and wage statements, shall be filed ~~sent by the~~  
29 ~~employer or carrier to the division~~ at such times and in such  
30 manner as the division may prescribe. In carrying out its  
31 responsibilities under this chapter, the division may by rule



1 provide for the obtaining of any medical records relating to  
2 medical treatment provided pursuant to this chapter,  
3 notwithstanding the provisions of ss. 90.503 and ~~395.3025(4)~~  
4 ~~and 396.112~~.

5 (10) The division may by rule prescribe definitions  
6 that are necessary for the effective administration of this  
7 section.

8 Section 5. Subsection (1) and paragraph (d) of  
9 subsection (2) of section 440.191, Florida Statutes, are  
10 amended to read:

11 440.191 Employee Assistance and Ombudsman Office.--

12 (1)(a) In order to effect the self-executing features  
13 of the Workers' Compensation Law, this chapter shall be  
14 construed to permit injured employees and employers or the  
15 employer's carrier to resolve disagreements without undue  
16 expense, costly litigation, or delay in the provisions of  
17 benefits. It is the duty of all who participate in the  
18 workers' compensation system, including, but not limited to,  
19 carriers, service providers, health care providers, attorneys,  
20 employers, and employees, to attempt to resolve disagreements  
21 in good faith and to cooperate with the division's efforts to  
22 resolve disagreements between the parties. The division may by  
23 rule prescribe definitions that are necessary for the  
24 effective administration of this section.

25 (b) An Employee Assistance and Ombudsman Office is  
26 created within the Division of Workers' Compensation to inform  
27 and assist injured workers, employers, carriers, and health  
28 care providers in fulfilling their responsibilities under this  
29 chapter. The division may by rule specify the procedures for  
30 administering requests for assistance provided by this  
31 section.

1           (2)  
2           (d) The Employee Assistance and Ombudsman Office may  
3 assign an ombudsman to assist the employee in resolving the  
4 dispute. If the dispute is not resolved within 30 days after  
5 the employee contacts the office, the ombudsman shall, at the  
6 employee's request, assist the employee in drafting a petition  
7 for benefits and explain the procedures for filing petitions.  
8 The division may by rule determine the method used to  
9 calculate the 30-day period.The Employee Assistance and  
10 Ombudsman Office may not represent employees before the judges  
11 of compensation claims. An employer or carrier may not pay any  
12 attorneys' fees on behalf of the employee for services  
13 rendered or costs incurred in connection with this section,  
14 unless expressly authorized elsewhere in this chapter.

15           Section 6. Paragraph (a) of subsection (15) of section  
16 440.20, Florida Statutes, is amended and subsections (17) and  
17 (18) are added to that section to read:

18           440.20 Time for payment of compensation; penalties for  
19 late payment.--

20           (15)(a) The division shall examine on an ongoing basis  
21 claims files in order to identify questionable claims-handling  
22 techniques, questionable patterns or practices of claims, or a  
23 pattern of repeated unreasonably controverted claims by  
24 employers, carriers, self-insurers, health care providers,  
25 health care facilities, training and education providers, or  
26 any others providing services to employees pursuant to this  
27 chapter and may certify its findings to the Department of  
28 Insurance. Such questionable techniques, patterns, or repeated  
29 unreasonably controverted claims as constitute a general  
30 business practice of a carrier in the judgment of the division  
31 shall be certified in its findings by the division to the

1 Department of Insurance or such other appropriate licensing  
2 agency. Such certification by the division is exempt from the  
3 provisions of chapter 120. Upon receipt of any such  
4 certification, the Department of Insurance shall take  
5 appropriate action so as to bring such general business  
6 practices to a halt pursuant to s. 440.38(3)(a). The division  
7 may initiate investigations of questionable techniques,  
8 patterns, practices, or repeated unreasonably controverted  
9 claims. The division may by rule establish procedures for  
10 corrective-action plans and for reauditing carriers receiving  
11 unfavorable audits.

12 (17) The division may by rule prescribe definitions  
13 that are necessary for the effective administration of this  
14 section.

15 (18) The division may by rule establish procedures and  
16 set standards for the Automated Carrier Performance System.

17 Section 7. Section 440.40, Florida Statutes, is  
18 amended to read:

19 440.40 Compensation notice.--Every employer who has  
20 secured compensation under the provisions of this chapter  
21 shall keep posted in a conspicuous place or places in and  
22 about her or his place or places of business typewritten or  
23 printed notices, in accordance with a form prescribed by the  
24 division, stating that such employer has secured the payment  
25 of compensation in accordance with the provisions of this  
26 chapter. Such notices shall contain the name and address of  
27 the carrier, if any, with whom the employer has secured  
28 payment of compensation and the date of the expiration of the  
29 policy. The division may by rule require carriers to provide  
30 the notices to policyholders.

31

1           Section 8. Subsection (2) of section 440.42, Florida  
2 Statutes, is amended to read:

3           440.42 Insurance policies; liability.--

4           (2) No contract or policy of insurance issued by a  
5 carrier under this chapter shall expire or be canceled until  
6 at least 30 days have elapsed after a notice of cancellation  
7 has been sent to the division and to the employer in  
8 accordance with the provisions of s. 440.185(7). However,  
9 when duplicate or dual coverage exists by reason of two  
10 different carriers having issued policies of insurance to the  
11 same employer securing the same liability, it shall be  
12 presumed that only that policy with the later effective date  
13 shall be in force and that the earlier policy terminated upon  
14 the effective date of the latter. In the event that both  
15 policies carry the same effective date, one of the policies  
16 may be canceled instanter upon filing a notice of cancellation  
17 with the division and serving a copy thereof upon the employer  
18 in such manner as the division prescribes by rule by  
19 ~~regulation may prescribe~~. The division may by rule require  
20 retroactive cancellation by the carrier and may prescribe the  
21 content of the notice of cancellation, including the time,  
22 place, and manner in which the notice of cancellation is to be  
23 served.

24           Section 9. Subsections (2) and (8) of section 440.49,  
25 Florida Statutes, are amended and paragraph (g) is added to  
26 subsection (7) of that section to read:

27           440.49 Limitation of liability for subsequent injury  
28 through Special Disability Trust Fund.--

29           (2) DEFINITIONS.--As used in this section, the term:

30           (a) "Permanent physical impairment" means and is  
31 limited to the conditions listed in paragraph (6)(a).

1           (b) "Preferred worker" means a worker who, because of  
2 a permanent impairment resulting from a compensable injury or  
3 occupational disease, is unable to return to the worker's  
4 regular employment.

5           (c) "Merger" describes or means that:

6           1. If the permanent physical impairment had not  
7 existed, the subsequent accident or occupational disease would  
8 not have occurred;

9           2. The permanent disability or permanent impairment  
10 resulting from the subsequent accident or occupational disease  
11 is materially and substantially greater than that which would  
12 have resulted had the permanent physical impairment not  
13 existed, and the employer has been required to pay, and has  
14 paid, permanent total disability or permanent impairment  
15 benefits for that materially and substantially greater  
16 disability;

17           3. The preexisting permanent physical impairment is  
18 aggravated or accelerated as a result of the subsequent injury  
19 or occupational disease, or the preexisting impairment has  
20 contributed, medically and circumstantially, to the need for  
21 temporary compensation, medical, or attendant care and the  
22 employer has been required to pay, and has paid, temporary  
23 compensation, medical, or attendant care benefits for the  
24 aggravated preexisting permanent impairment; or

25           4. Death would not have been accelerated if the  
26 permanent physical impairment had not existed.

27           (d) "Excess permanent compensation" means that  
28 compensation for permanent impairment, or permanent total  
29 disability or death benefits, for which the employer or  
30 carrier is otherwise entitled to reimbursement from the  
31 Special Disability Trust Fund.

1  
2 In addition to the definitions contained in this subsection,  
3 the division may by rule prescribe definitions that are  
4 necessary for the effective administration of this section.

5 (7) REIMBURSEMENT OF EMPLOYER.--

6 (g) The division may by rule require specific  
7 procedures for the administration and processing of claims  
8 made through the Special Disability Trust Fund.

9 (8) PREFERRED WORKER PROGRAM.--The division shall  
10 issue identity cards to preferred workers upon request by  
11 qualified employees and shall reimburse an employer, from the  
12 Special Disability Trust Fund, for the cost of workers'  
13 compensation premium related to the preferred workers payroll  
14 for up to 3 years of continuous employment upon satisfactory  
15 evidence of placement and issuance of payroll and  
16 classification records and upon the employee's certification  
17 of employment. The division may by rule prescribe definitions  
18 and procedures for the administration of the preferred worker  
19 program.

20 Section 10. Subsection (2) of section 440.59, Florida  
21 Statutes, is amended to read:

22 440.59 Reporting requirements.--

23 (2) The Division of Workers' Compensation of the  
24 Department of Labor and Employment Security shall complete on  
25 a quarterly basis an analysis of the previous quarter's  
26 injuries which resulted in workers' compensation claims. The  
27 analysis shall be broken down by risk classification, shall  
28 show for each such risk classification the frequency and  
29 severity for the various types of injury, and shall include an  
30 analysis of the causes of such injuries. The division shall  
31 distribute to each employer and self-insurer in the state

1 covered by the Workers' Compensation Law the data relevant to  
2 its workforce. The report shall also be distributed to the  
3 insurers authorized to write workers' compensation insurance  
4 in the state. The division may by rule require the submission  
5 of reports containing information necessary for the effective  
6 administration of this section.

7 Section 11. This act shall take effect upon becoming a  
8 law.

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SENATE SUMMARY

Authorizes the Division of Workers' Compensation to adopt  
rules relating to the administration of the Workers'  
Compensation Law.