

By the Committee on Banking and Insurance and Senator Diaz-Balart

311-1771C-98

1 A bill to be entitled
2 An act relating to rulemaking authority of the
3 Division of Workers' Compensation (RAB);
4 amending ss. 440.05, 440.15, 440.16, 440.185,
5 440.191, 440.20, 440.40, 440.42, 440.49, F.S.;
6 extending rulemaking authority to the Division
7 of Workers' Compensation; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

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

14 440.05 Election of exemption; revocation of election;
15 notice; certification.--

16 (7) The division may by rule prescribe forms and
17 procedures for filing an election of exemption, revocation of
18 election to be exempt, and notice of election of coverage for
19 all employers and require specified forms to be submitted by
20 all employers in filing for the election of exemption. The
21 division may by rule prescribe forms and procedures for
22 issuing a certificate of the election of exemption.

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

27 440.15 Compensation for disability.--Compensation for
28 disability shall be paid to the employee, subject to the
29 limits provided in s. 440.12(2), as follows:

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

31 (a) Impairment benefits.--

1 1. Once the employee has reached the date of maximum
2 medical improvement, impairment benefits are due and payable
3 within 20 days after the carrier has knowledge of the
4 impairment.

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

1 chiropractor licensed under chapter 460, a podiatrist licensed
2 under chapter 461, an optometrist licensed under chapter 463,
3 or a dentist licensed under chapter 466, as appropriate
4 considering the nature of the injury. No other persons are
5 authorized to render opinions regarding the existence of or
6 the extent of permanent impairment.

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

17 a. The expiration of a period computed at the rate of
18 3 weeks for each percentage point of impairment; or

19 b. The death of the employee.

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

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

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

11 | 5. The carrier shall pay the employee impairment
12 | income benefits for a period based on the impairment rating.

13 | 6. The division may by rule specify forms and
14 | procedures governing the method of payment of wage loss and
15 | impairment benefits for dates of accidents before January 1,
16 | 1994, and for dates of accidents on or after January 1, 1994.

17 | (b) Supplemental benefits.--

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

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

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

29 | c. The employee has in good faith attempted to obtain
30 | employment commensurate with the employee's ability to work.

31 |

1 2. If an employee is not entitled to supplemental
2 benefits at the time of payment of the final weekly impairment
3 income benefit because the employee is earning at least 80
4 percent of the employee's average weekly wage, the employee
5 may become entitled to supplemental benefits at any time
6 within 1 year after the impairment income benefit period ends
7 if:

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

11 b. The employee meets the other requirements of
12 subparagraph 1.; and

13 c. The employee's decrease in earnings is a direct
14 result of the employee's impairment from the compensable
15 injury.

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

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

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

30 6. The carrier shall begin payment of supplemental
31 benefits not later than the seventh day after the expiration

1 date of the impairment income benefit period and shall
2 continue to timely pay those benefits. The carrier may request
3 a mediation conference for the purpose of contesting the
4 employee's entitlement to or the amount of supplemental income
5 benefits.

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

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

23 9. The division may by rule define terms that are
24 necessary for the administration of this section and forms and
25 procedures governing the method of payment of supplemental
26 benefits for dates of accidents before January 1, 1994, and
27 for dates of accidents on or after January 1, 1994.

28 (4) TEMPORARY PARTIAL DISABILITY.--

29 (b) Such benefits shall be paid during the continuance
30 of such disability, not to exceed a period of 104 weeks, as
31 provided by this subsection and subsection (2). Once the

1 injured employee reaches the maximum number of weeks,
2 temporary disability benefits cease and the injured worker's
3 permanent impairment must be determined. The division may by
4 rule specify forms and procedures governing the method of
5 payment of temporary disability benefits for dates of
6 accidents before January 1, 1994, and for dates of accidents
7 on or after January 1, 1994.

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

11 (b) If the provisions of 42 U.S.C. s. 424(a) are
12 amended to provide for a reduction or increase of the
13 percentage of average current earnings that the sum of
14 compensation benefits payable under this chapter and the
15 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
16 the amount of the reduction of benefits provided in this
17 subsection shall be reduced or increased accordingly. The
18 division may by rule specify forms and procedures governing
19 the method for calculating and administering the offset of
20 benefits payable under this chapter and benefits payable under
21 42 U.S.C. ss. 402 and 423. The division shall have first
22 priority in taking any available social security offsets on
23 dates of accidents occurring before July 1, 1984.

24 Section 3. Paragraph (a) of subsection (1) of section
25 440.16, Florida Statutes, is amended to read:

26 440.16 Compensation for death.--

27 (1) If death results from the accident within 1 year
28 thereafter or follows continuous disability and results from
29 the accident within 5 years thereafter, the employer shall
30 pay:

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1 (a) Within 14 days after receiving the bill, actual
2 funeral expenses not to exceed \$5,000.

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

6 440.185 Notice of injury or death; reports; penalties
7 for violations.--

8 (5) Additional reports with respect to such injury and
9 of the condition of such employee, including copies of medical
10 reports, funeral expenses, and wage statements, shall be filed
11 ~~sent~~ by the employer or carrier to the division at such times
12 and in such manner as the division may prescribe by rule. In
13 carrying out its responsibilities under this chapter, the
14 division may by rule provide for the obtaining of any medical
15 records relating to medical treatment provided pursuant to
16 this chapter, notwithstanding the provisions of ss. 90.503
17 and 395.3025(4), and 396.112.

18 (10) The division may by rule prescribe forms and
19 procedures governing the submission of the change in claims
20 administration report and the risk class code and standard
21 industry code report for all lost time and denied lost-time
22 cases. The division may by rule define terms that are
23 necessary for the effective administration of this section.

24 Section 5. Subsection (1) and paragraph (d) of
25 subsection (2) of section 440.191, Florida Statutes, are
26 amended to read:

27 440.191 Employee Assistance and Ombudsman Office.--

28 (1)(a) In order to effect the self-executing features
29 of the Workers' Compensation Law, this chapter shall be
30 construed to permit injured employees and employers or the
31 employer's carrier to resolve disagreements without undue

1 expense, costly litigation, or delay in the provisions of
2 benefits. It is the duty of all who participate in the
3 workers' compensation system, including, but not limited to,
4 carriers, service providers, health care providers, attorneys,
5 employers, and employees, to attempt to resolve disagreements
6 in good faith and to cooperate with the division's efforts to
7 resolve disagreements between the parties. The division may by
8 rule prescribe definitions that are necessary for the
9 effective administration of this section.

10 (b) An Employee Assistance and Ombudsman Office is
11 created within the Division of Workers' Compensation to inform
12 and assist injured workers, employers, carriers, and health
13 care providers in fulfilling their responsibilities under this
14 chapter. The division may by rule specify forms and procedures
15 for administering requests for assistance provided by this
16 section.

17 (2)

18 (d) The Employee Assistance and Ombudsman Office may
19 assign an ombudsman to assist the employee in resolving the
20 dispute. If the dispute is not resolved within 30 days after
21 the employee contacts the office, the ombudsman shall, at the
22 employee's request, assist the employee in drafting a petition
23 for benefits and explain the procedures for filing petitions.
24 The division may by rule determine the method used to
25 calculate the 30-day period.The Employee Assistance and
26 Ombudsman Office may not represent employees before the judges
27 of compensation claims. An employer or carrier may not pay any
28 attorneys' fees on behalf of the employee for services
29 rendered or costs incurred in connection with this section,
30 unless expressly authorized elsewhere in this chapter.

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1 Section 6. Paragraph (a) of subsection (15) of section
2 440.20, Florida Statutes, is amended and subsection (17) is
3 added to that section to read:

4 440.20 Time for payment of compensation; penalties for
5 late payment.--

6 (15)(a) The division shall examine on an ongoing basis
7 claims files in order to identify questionable claims-handling
8 techniques, questionable patterns or practices of claims, or a
9 pattern of repeated unreasonably controverted claims by
10 employers, carriers, self-insurers, health care providers,
11 health care facilities, training and education providers, or
12 any others providing services to employees pursuant to this
13 chapter and may certify its findings to the Department of
14 Insurance. Such questionable techniques, patterns, or repeated
15 unreasonably controverted claims as constitute a general
16 business practice of a carrier in the judgment of the division
17 shall be certified in its findings by the division to the
18 Department of Insurance or such other appropriate licensing
19 agency. Such certification by the division is exempt from the
20 provisions of chapter 120. Upon receipt of any such
21 certification, the Department of Insurance shall take
22 appropriate action so as to bring such general business
23 practices to a halt pursuant to s. 440.38(3)(a). The division
24 may initiate investigations of questionable techniques,
25 patterns, practices, or repeated unreasonably controverted
26 claims. The division may by rule establish forms and
27 procedures for corrective-action plans and for auditing
28 carriers.

29 (17) The division may by rule establish audit
30 procedures and set standards for the Automated Carrier
31 Performance System.

1 Section 7. Section 440.40, Florida Statutes, is
2 amended to read:

3 440.40 Compensation notice.--Every employer who has
4 secured compensation under the provisions of this chapter
5 shall keep posted in a conspicuous place or places in and
6 about her or his place or places of business typewritten or
7 printed notices, in accordance with a form prescribed by the
8 division, stating that such employer has secured the payment
9 of compensation in accordance with the provisions of this
10 chapter. Such notices shall contain the name and address of
11 the carrier, if any, with whom the employer has secured
12 payment of compensation and the date of the expiration of the
13 policy. The division may by rule prescribe the form of the
14 notices and require carriers to provide the notices to
15 policyholders.

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

18 440.42 Insurance policies; liability.--

19 (2) No contract or policy of insurance issued by a
20 carrier under this chapter shall expire or be canceled until
21 at least 30 days have elapsed after a notice of cancellation
22 has been sent to the division and to the employer in
23 accordance with the provisions of s. 440.185(7). However,
24 when duplicate or dual coverage exists by reason of two
25 different carriers having issued policies of insurance to the
26 same employer securing the same liability, it shall be
27 presumed that only that policy with the later effective date
28 shall be in force and that the earlier policy terminated upon
29 the effective date of the latter. In the event that both
30 policies carry the same effective date, one of the policies
31 may be canceled instanter upon filing a notice of cancellation

1 with the division and serving a copy thereof upon the employer
2 in such manner as the division prescribes by rule by
3 ~~regulation may prescribe~~. The division may by rule prescribe
4 the content of the notice of retroactive cancellation and
5 specify the time, place, and manner in which the notice of
6 cancellation is to be served.

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

10 440.49 Limitation of liability for subsequent injury
11 through Special Disability Trust Fund.--

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

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

15 (b) "Preferred worker" means a worker who, because of
16 a permanent impairment resulting from a compensable injury or
17 occupational disease, is unable to return to the worker's
18 regular employment.

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

20 1. If the permanent physical impairment had not
21 existed, the subsequent accident or occupational disease would
22 not have occurred;

23 2. The permanent disability or permanent impairment
24 resulting from the subsequent accident or occupational disease
25 is materially and substantially greater than that which would
26 have resulted had the permanent physical impairment not
27 existed, and the employer has been required to pay, and has
28 paid, permanent total disability or permanent impairment
29 benefits for that materially and substantially greater
30 disability;

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1 3. The preexisting permanent physical impairment is
2 aggravated or accelerated as a result of the subsequent injury
3 or occupational disease, or the preexisting impairment has
4 contributed, medically and circumstantially, to the need for
5 temporary compensation, medical, or attendant care and the
6 employer has been required to pay, and has paid, temporary
7 compensation, medical, or attendant care benefits for the
8 aggravated preexisting permanent impairment; or

9 4. Death would not have been accelerated if the
10 permanent physical impairment had not existed.

11 (d) "Excess permanent compensation" means that
12 compensation for permanent impairment, or permanent total
13 disability or death benefits, for which the employer or
14 carrier is otherwise entitled to reimbursement from the
15 Special Disability Trust Fund.

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17 In addition to the definitions contained in this subsection,
18 the division may by rule prescribe definitions that are
19 necessary for the effective administration of this section.

20 (7) REIMBURSEMENT OF EMPLOYER.--

21 (g) The division may by rule require specific forms
22 and procedures for the administration and processing of claims
23 made through the Special Disability Trust Fund.

24 (8) PREFERRED WORKER PROGRAM.--The division shall
25 issue identity cards to preferred workers upon request by
26 qualified employees and shall reimburse an employer, from the
27 Special Disability Trust Fund, for the cost of workers'
28 compensation premium related to the preferred workers payroll
29 for up to 3 years of continuous employment upon satisfactory
30 evidence of placement and issuance of payroll and
31 classification records and upon the employee's certification

1 of employment. The division may by rule prescribe definitions,
2 forms, and procedures for the administration of the preferred
3 worker program. The division may by rule prescribe the
4 schedule for submission of forms for participation in the
5 program.

6 Section 10. This act shall take effect upon becoming a
7 law.

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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 Senate Bill 1342

12 The committee substitute revises the statutory authority for
13 rulemaking for the Division of Workers' Compensation of the
Department of Labor and Employment Security by:

- 14 - Revising general reporting requirements to specifically
15 require the risk class code and standard industry code
report on lost time and denied lost time cases and change
16 in claims administration report;
17 - Authorizing the division to define terms that are
18 necessary for the effective administration of the
program; and
19 - Authorizing the division to take first priority in any
20 available social security offsets on dates of accidents
occurring before July 1, 1984.

21 Rulemaking authority related to the payment of funeral
22 expenses is not authorized; however, s. 440.16, F.S., is
amended to require payment within 14 days of receipt of the
23 bill.
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