

By Representative Jacobs

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; revising definitions;
4 amending s. 440.05, F.S.; replacing an
5 authorization for certain persons or entities
6 in the construction industry to elect to be
7 exempt from workers' compensation provisions
8 with a prohibition against such exemption;
9 amending s. 440.10, F.S.; deleting provisions
10 relating to such exemption; requiring the
11 Division of Workers' Compensation of the
12 Department of Labor and Employment Security to
13 assess a penalty under certain circumstances;
14 providing for a specific reduction in
15 individual classifications for construction
16 industry codes; amending s. 440.13, F.S.;
17 revising a definition; amending s. 440.134,
18 F.S.; revising definitions; providing for
19 informal and formal grievance procedures;
20 clarifying certain managed care arrangement
21 provisions; amending s. 440.15, F.S.; requiring
22 employers or carriers to offer employees
23 reemployment assessments for certain purposes;
24 providing for use of certain evaluation or
25 testing results for certain purposes; revising
26 the basis for payment of impairment income
27 benefits; specifying evidence of compliance
28 with certain supplemental benefits provisions;
29 providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsections (11)-(36) of section 440.02,
2 Florida Statutes, are renumbered as subsections (12)-(37),
3 respectively, a new subsection (11) is added to said section,
4 and present subsections (13) and (34) of said section are
5 amended, to read:

6 440.02 Definitions.--When used in this chapter, unless
7 the context clearly requires otherwise, the following terms
8 shall have the following meanings:

9 (11) "Impairment" means a physical or mental
10 impairment which must be the direct result of an anatomical,
11 physiological, or psychological abnormality and must be
12 causally and directly related to an industrial injury or
13 accident. The impairment must be documented by objective
14 medical evidence and accepted clinical and laboratory
15 diagnostic techniques. The impairment must only be medical and
16 based upon clinical evidence of signs, symptoms, and related
17 laboratory findings of medical instability which will last or
18 be expected to last until medical stability.

19 ~~(14)~~~~(13)~~(a) "Employee" means any person engaged in any
20 employment under any appointment or contract of hire or
21 apprenticeship, express or implied, oral or written, whether
22 lawfully or unlawfully employed, and includes, but is not
23 limited to, aliens and minors.

24 (b) "Employee" includes any person who is an officer
25 of a corporation and who performs services for remuneration
26 for such corporation within this state, whether or not such
27 services are continuous.

28 1. Any officer of a corporation may elect to be exempt
29 from this chapter by filing written notice of the election
30 with the division as provided in s. 440.05.

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1 2. As to officers of a corporation who are actively
2 engaged in the construction industry, no ~~more than three~~
3 officers may elect to be exempt from this chapter ~~by filing~~
4 ~~written notice of the election with the division as provided~~
5 ~~in s. 440.05.~~

6 3. An officer of a corporation who elects to be exempt
7 from this chapter by filing a written notice of the election
8 with the division as provided in s. 440.05 is not an employee.

9
10 Services are presumed to have been rendered to the corporation
11 if the officer is compensated by other than dividends upon
12 shares of stock of the corporation which he owns.

13 (c) "Employee" includes a sole proprietor or a partner
14 who devotes full time to the proprietorship or partnership
15 and, except as provided in this paragraph, elects to be
16 included in the definition of employee by filing notice
17 thereof as provided in s. 440.05. Partners or sole proprietors
18 actively engaged in the construction industry are considered
19 employees ~~unless they elect to be excluded from the definition~~
20 ~~of employee by filing written notice of the election with the~~
21 ~~division as provided in s. 440.05. However, no more than three~~
22 ~~partners in a partnership that is actively engaged in the~~
23 ~~construction industry may elect to be excluded. A sole~~
24 ~~proprietor or partner who is actively engaged in the~~
25 ~~construction industry and who elects to be exempt from this~~
26 ~~chapter by filing a written notice of the election with the~~
27 ~~division as provided in s. 440.05 is not an employee. For~~
28 purposes of this chapter, an independent contractor is an
29 employee unless he meets all of the conditions set forth in
30 subparagraph (d)1.

31 (d) "Employee" does not include:

- 1 1. An independent contractor, if:
- 2 a. The independent contractor maintains a separate
- 3 business with his own work facility, truck, equipment,
- 4 materials, or similar accommodations;
- 5 b. The independent contractor holds or has applied for
- 6 a federal employer identification number, unless the
- 7 independent contractor is a sole proprietor who is not
- 8 required to obtain a federal employer identification number
- 9 under state or federal requirements;
- 10 c. The independent contractor performs or agrees to
- 11 perform specific services or work for specific amounts of
- 12 money and controls the means of performing the services or
- 13 work;
- 14 d. The independent contractor incurs the principal
- 15 expenses related to the service or work that he performs or
- 16 agrees to perform;
- 17 e. The independent contractor is responsible for the
- 18 satisfactory completion of work or services that he performs
- 19 or agrees to perform and is or could be held liable for a
- 20 failure to complete the work or services;
- 21 f. The independent contractor receives compensation
- 22 for work or services performed for a commission or on a
- 23 per-job or competitive-bid basis and not on any other basis;
- 24 g. The independent contractor may realize a profit or
- 25 suffer a loss in connection with performing work or services;
- 26 h. The independent contractor has continuing or
- 27 recurring business liabilities or obligations; and
- 28 i. The success or failure of the independent
- 29 contractor's business depends on the relationship of business
- 30 receipts to expenditures.
- 31

1 However, the determination as to whether an individual
2 included in the Standard Industrial Classification Manual of
3 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
4 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
5 2448, or 2449, or a newspaper delivery person, is an
6 independent contractor is governed not by the criteria in this
7 paragraph but by common-law principles, giving due
8 consideration to the business activity of the individual.

9 2. A real estate salesperson or agent, if that person
10 agrees, in writing, to perform for remuneration solely by way
11 of commission.

12 3. Bands, orchestras, and musical and theatrical
13 performers, including disk jockeys, performing in licensed
14 premises as defined in chapter 562, if a written contract
15 evidencing an independent contractor relationship is entered
16 into before the commencement of such entertainment.

17 4. An owner-operator of a motor vehicle who transports
18 property under a written contract with a motor carrier which
19 evidences a relationship by which the owner-operator assumes
20 the responsibility of an employer for the performance of the
21 contract, if the owner-operator is required to furnish the
22 necessary motor vehicle equipment and all costs incidental to
23 the performance of the contract, including, but not limited
24 to, fuel, taxes, licenses, repairs, and hired help; and the
25 owner-operator is paid a commission for his transportation
26 service and is not paid by the hour or on some other
27 time-measured basis.

28 5. A person whose employment is both casual and not in
29 the course of the trade, business, profession, or occupation
30 of the employer.

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1 6. A volunteer, except a volunteer worker for the
2 state or a county, municipality, or other governmental entity.
3 A person who does not receive monetary remuneration for his
4 services is presumed to be a volunteer unless there is
5 substantial evidence that a valuable consideration was
6 intended by both employer and employee. For purposes of this
7 chapter, the term "volunteer" includes, but is not limited to:

8 a. Persons who serve in private nonprofit agencies and
9 who receive no compensation other than expenses in an amount
10 less than or equivalent to the standard mileage and per diem
11 expenses provided to salaried employees in the same agency or,
12 if such agency does not have salaried employees who receive
13 mileage and per diem, then such volunteers who receive no
14 compensation other than expenses in an amount less than or
15 equivalent to the customary mileage and per diem paid to
16 salaried workers in the community as determined by the
17 division; and

18 b. Volunteers participating in federal programs
19 established under Pub. L. No. 93-113.

20 7. Any officer of a corporation who elects to be
21 exempt from this chapter.

22 ~~8. A sole proprietor or officer of a corporation who~~
23 ~~actively engages in the construction industry, and a partner~~
24 ~~in a partnership that is actively engaged in the construction~~
25 ~~industry, who elects to be exempt from the provisions of this~~
26 ~~chapter. Such sole proprietor, officer, or partner is not an~~
27 ~~employee for any reason until the notice of revocation of~~
28 ~~election filed pursuant to s. 440.05 is effective.~~

29 8.9. An exercise rider who does not work for a single
30 horse farm or breeder, and who is compensated for riding on a
31 case-by-case basis, provided a written contract is entered

1 into prior to the commencement of such activity which
2 evidences that an employee/employer relationship does not
3 exist.

4 9.10- A taxicab, limousine, or other passenger
5 vehicle-for-hire driver who operates said vehicles pursuant to
6 a written agreement with a company which provides any
7 dispatch, marketing, insurance, communications, or other
8 services under which the driver and any fees or charges paid
9 by the driver to the company for such services are not
10 conditioned upon, or expressed as a proportion of, fare
11 revenues.

12 (35)~~(34)~~ "Catastrophic injury" means a permanent
13 impairment constituted by:

14 (a) Spinal cord injury involving severe paralysis of
15 an arm, a leg, or the trunk;

16 (b) Amputation of an arm, a hand, a foot, or a leg
17 involving the effective loss of use of that appendage;

18 (c) Severe brain or closed-head injury as evidenced
19 by:

20 1. Severe sensory or motor disturbances;

21 2. Severe communication disturbances;

22 3. Severe complex integrated disturbances of cerebral
23 function;

24 4. Severe episodic neurological disorders; or

25 5. Other severe brain and closed-head injury
26 conditions at least as severe in nature as any condition
27 provided in subparagraphs 1.-4.;

28 (d) First-degree, second-degree, or third-degree burns
29 of 25 percent or more of the total body surface, or
30 third-degree burns of 5 percent or more to the face and hands,
31

1 or complete and total facial burns resulting in scarring and
2 disfigurement;

3 (e) Total or industrial blindness, complete and total
4 loss of hearing or any of the special senses, or total loss of
5 speech so as to be inarticulable or inaudible; or

6 (f) Any other injury that would otherwise qualify
7 under this chapter of a nature and severity that would qualify
8 an employee to receive disability income benefits under Title
9 II or supplemental security income benefits under Title XVI of
10 the federal Social Security Act as the Social Security Act
11 existed on July 1, 1992, without regard to any time
12 limitations provided under that act.

13 Section 2. Subsection (3) of section 440.05, Florida
14 Statutes, is amended to read:

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

17 (3) No independent contractor, Each sole proprietor,
18 partner, or officer of a corporation ~~who is actively~~ engaged
19 in the construction industry shall be exempt from coverage
20 under this chapter and who elects an exemption from this
21 ~~chapter or who, after electing such exemption, revokes that~~
22 ~~exemption, must mail a written notice to such effect to the~~
23 ~~division on a form prescribed by the division. The notice of~~
24 ~~election to be exempt from the provisions of this chapter must~~
25 ~~be notarized and under oath. The election must list the name,~~
26 ~~federal tax identification number, social security number, and~~
27 ~~all certified or registered licenses issued pursuant to~~
28 ~~chapter 489 held by the person seeking the exemption. The form~~
29 ~~must identify each sole proprietorship, partnership, or~~
30 ~~corporation that employs the person electing the exemption and~~
31 ~~must list the social security number or federal tax~~

1 ~~identification number of each such employer. In addition, the~~
2 ~~election form must provide that the sole proprietor, partner,~~
3 ~~or officer electing an exemption is not entitled to benefits~~
4 ~~under this chapter, must provide that the election does not~~
5 ~~exceed exemption limits for officers and partnerships provided~~
6 ~~in s. 440.02, and must certify that any employees of the sole~~
7 ~~proprietor, partner, or officer electing an exemption are~~
8 ~~covered by workers' compensation insurance. Upon receipt of~~
9 ~~the notice of the election to be exempt and a determination~~
10 ~~that the notice meets the requirements of this subsection, the~~
11 ~~division shall issue a certification of the election to the~~
12 ~~sole proprietor, partner, or officer. The certificate of~~
13 ~~election must list the names of the sole proprietorship,~~
14 ~~partnership, or corporation listed in the request for~~
15 ~~exemption. A new certificate of election must be obtained each~~
16 ~~time the person is employed by a new sole proprietorship,~~
17 ~~partnership, or corporation that is not listed on the~~
18 ~~certificate of election. A copy of the certificate of election~~
19 ~~must be sent to each workers' compensation carrier identified~~
20 ~~in the request for exemption. The certification of the~~
21 ~~election is valid until the sole proprietor, partner, or~~
22 ~~officer revokes his election. Upon filing a notice of~~
23 ~~revocation of election, a sole proprietor, partner, or officer~~
24 ~~who is a subcontractor must notify his contractor.~~

25 Section 3. Subsection (1) of section 440.10, Florida
26 Statutes, is amended to read:

27 440.10 Liability for compensation.--

28 (1)(a) Every employer coming within the provisions of
29 this chapter, including any brought within the chapter by
30 waiver of exclusion or of exemption, shall be liable for, and
31 shall secure, the payment to his employees, or any physician,

1 surgeon, or pharmacist providing services under the provisions
2 of s. 440.13, of the compensation payable under ss. 440.13,
3 440.15, and 440.16. Any contractor or subcontractor who
4 engages in any public or private construction in the state
5 shall secure and maintain compensation for his employees under
6 this chapter as provided in s. 440.38.

7 (b) In case a contractor sublets any part or parts of
8 his contract work to a subcontractor or subcontractors, all of
9 the employees of such contractor and subcontractor or
10 subcontractors engaged on such contract work shall be deemed
11 to be employed in one and the same business or establishment;
12 and the contractor shall be liable for, and shall secure, the
13 payment of compensation to all such employees, except to
14 employees of a subcontractor who has secured such payment.

15 (c) A contractor may require a subcontractor to
16 provide evidence of workers' compensation insurance or a copy
17 of his certificate of election. ~~A subcontractor electing to be~~
18 ~~exempt as a sole proprietor, partner, or officer of a~~
19 ~~corporation shall provide a copy of his certificate of~~
20 ~~election to his contractor.~~

21 (d)1. If a contractor becomes liable for the payment
22 of compensation to the employees of a subcontractor who has
23 failed to secure such payment in violation of s. 440.38, the
24 contractor or other third-party payor shall be entitled to
25 recover from the subcontractor all benefits paid or payable
26 plus interest unless the contractor and subcontractor have
27 agreed in writing that the contractor will provide coverage.

28 2. If a contractor or third-party payor becomes liable
29 for the payment of compensation to the employee of a
30 subcontractor who is actively engaged in the construction
31 industry ~~and has elected to be exempt from the provisions of~~

1 ~~this chapter, but whose election is invalid,~~ the contractor or
2 third-party payor may recover from the independent contractor
3 ~~claimant,~~ partnership, or corporation all benefits paid or
4 payable plus interest, unless the contractor and the
5 subcontractor have agreed in writing that the contractor will
6 provide coverage.

7 (e) A subcontractor is not liable for the payment of
8 compensation to the employees of another subcontractor on such
9 contract work and is not protected by the
10 exclusiveness-of-liability provisions of s. 440.11 from action
11 at law or in admiralty on account of injury of such employee
12 of another subcontractor.

13 (f) If an employer willfully fails to secure
14 compensation as required by this chapter, the division shall
15 ~~may~~ assess against the employer a penalty not to exceed \$5,000
16 for each employee of that employer who is classified by the
17 employer as an independent contractor but who is found by the
18 division or a judge of compensation claims to not meet the
19 criteria for an independent contractor that are set forth in
20 s. 440.02.

21 (g) For purposes of this section, a person is
22 conclusively presumed to be an independent contractor if:

23 1. The independent contractor provides the general
24 contractor with an affidavit stating that he meets all the
25 requirements of s. 440.02(14)~~(13)~~(d); or ~~and~~

26 2. The independent contractor provides the general
27 contractor with a valid certificate of workers' compensation
28 insurance ~~or a valid certificate of exemption issued by the~~
29 ~~division.~~

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1 ~~A sole proprietor, independent contractor, partner, or officer~~
2 ~~of a corporation who elects exemption from this chapter by~~
3 ~~filing a certificate of election under s. 440.05 may not~~
4 ~~recover benefits or compensation under this chapter.~~

5 Section 4. One year after the effective date of this
6 act, there shall be a 10-percent reduction in each individual
7 classification for the construction industry codes for
8 purposes of workers' compensation insurance under chapter 440,
9 Florida Statutes.

10 Section 5. Paragraph (a) of subsection (1) of section
11 440.13, Florida Statutes, 1996 Supplement, is amended to read:

12 440.13 Medical services and supplies; penalty for
13 violations; limitations.--

14 (1) DEFINITIONS.--As used in this section, the term:

15 (a) "Alternate medical care" means a change in
16 treatment or health care provider which will rehabilitate the
17 injured worker and facilitate the injured worker's return to
18 suitable gainful employment at the most reasonable cost to the
19 employer.

20 Section 6. Subsections (1), (2), (10), and (15) of
21 section 440.134, Florida Statutes, are amended to read:

22 440.134 Workers' compensation managed care
23 arrangement.--

24 (1) As used in this section, the term:

25 (a) "Agency" means the Agency for Health Care
26 Administration.

27 (b)(1) "Capitated contract" means a contract in which
28 an insurer pays directly or indirectly a fixed amount to a
29 health care provider in exchange for the future rendering of
30 medical services for covered expenses.

31

1 ~~(c)(b)~~ "Complaint" means any dissatisfaction expressed
2 by an injured worker concerning an insurer's workers'
3 compensation managed care arrangement.

4 ~~(d)(c)~~ "Emergency care" means medical services as
5 defined in chapter 395.

6 ~~(e)(d)~~ "Formal grievance" means dissatisfaction with
7 the medical care provided by an insurer's workers'
8 compensation managed care arrangement health care providers,
9 expressed as a written complaint, filed by certified mail with
10 a managed care provider by an injured worker receiving
11 benefits pursuant to the workers' compensation managed care
12 agreement ~~expressed in writing by an injured worker.~~

13 ~~(f)~~ "Informal grievance" means a verbal complaint of
14 dissatisfaction expressed by the injured worker regarding the
15 medical care or treatment or benefits directly derived from
16 the managed care agreement.

17 ~~(g)(e)~~ "Insurer" means an insurance carrier,
18 self-insurance fund, assessable mutual insurer, or
19 individually self-insured employer.

20 ~~(h)(i)~~ "Medical care coordinator" means a primary care
21 provider within a provider network who is responsible for
22 managing the medical care of an injured worker including
23 determining other health care providers and health care
24 facilities to which the injured employee will be referred for
25 evaluation or treatment. A medical care coordinator shall be a
26 physician licensed under chapter 458 or an osteopath licensed
27 under chapter 459.

28 ~~(i)(k)~~ "Primary care provider" means, except in the
29 case of emergency treatment, the initial treating physician
30 and, when appropriate, continuing treating physician, who may
31 be a family practitioner, general practitioner, or internist

1 physician licensed under chapter 458; a family practitioner,
2 general practitioner, or internist osteopath licensed under
3 chapter 459; a chiropractor licensed under chapter 460; a
4 podiatrist licensed under chapter 461; an optometrist licensed
5 under chapter 463; or a dentist licensed under chapter 466.

6 (j) "Provider network" means a comprehensive panel of
7 health care providers and health care facilities who have
8 contracted directly or indirectly with an insurer to provide
9 appropriate remedial treatment, care, and attendance to
10 injured workers in accordance with this chapter.

11 (k) "Rehabilitation case manager" means a qualified
12 rehabilitation provider, as defined in s. 440.491(1)(c), who
13 is responsible for coordinating the provision of medical
14 benefits by providers, recommending medical and rehabilitation
15 treatment plans, and ensuring and facilitating return-to-work
16 outcomes.

17 (l)~~(f)~~ "Service area" means the agency-approved
18 geographic area within which an insurer is authorized to offer
19 a workers' compensation managed care arrangement.

20 (m)~~(g)~~ "Workers' compensation managed care
21 arrangement" means an arrangement under which a provider of
22 health care, a health care facility, a group of providers of
23 health care, a group of providers of health care and health
24 care facilities, an insurer that has an exclusive provider
25 organization approved under s. 627.6472 or a health
26 maintenance organization licensed under part I of chapter 641
27 has entered into a written agreement directly or indirectly
28 with an insurer to provide and to manage appropriate remedial
29 treatment, care, and attendance to injured workers in
30 accordance with this chapter.

31 (2)

1 (b) Effective October ~~January~~ 1, 1997, the employer
2 shall, subject to the limitations specified elsewhere in this
3 chapter, furnish to the employee solely through managed care
4 arrangements such medically necessary remedial treatment,
5 care, and attendance and case management for such period as
6 the nature of the injury or the process of recovery and
7 reemployment requires.

8 (10) Written procedures and methods for the management
9 of an injured worker's medical care and return-to-work status
10 by a qualified rehabilitation case manager ~~medical care~~
11 ~~coordinator~~ including:

12 (a) The mechanism for assuring that covered employees
13 receive all initial covered services from a primary care
14 provider participating in the provider network, except for
15 emergency care.

16 (b) The mechanism for assuring that all continuing
17 covered services be received from the same primary care
18 provider participating in the provider network that provided
19 the initial covered services, except when services from
20 another provider are authorized by the medical care
21 coordinator pursuant to paragraph (d).

22 (c) The policies and procedures for allowing an
23 employee one change to another provider within the same
24 specialty and provider network as the authorized treating
25 physician during the course of treatment for a work-related
26 injury, if a request is made to the rehabilitation case
27 manager ~~medical care coordinator~~ by the employee; and
28 requiring that special provision be made for more than one
29 such referral through the arrangement's grievance procedures.

30 (d) The process for assuring that all referrals
31 authorized by a medical care coordinator are made to the

1 participating network providers, unless medically necessary
2 treatment, care, and attendance are not available and
3 accessible to the injured worker in the provider network.

4 (15)(a) A workers' compensation managed care
5 arrangement must have and use procedures for hearing
6 complaints and resolving ~~written~~ grievances from injured
7 workers and health care providers. The procedures must be
8 aimed at mutual agreement for settlement and may include
9 arbitration procedures. Procedures provided herein are in
10 addition to other procedures contained in this chapter.

11 (b) The contract agreement between the workers'
12 compensation managed care arrangement pursuant to this section
13 shall provide for, and, if it does not so provide, shall be
14 deemed to include, the following grievance procedures:

15 1. For an informal grievance, a qualified
16 rehabilitation provider or medical case manager shall
17 investigate the complaint for accuracy and completeness and
18 make recommendations to the managed care provider within 30
19 days after the date of receipt of the original complaint.

20 2. For a formal grievance, the managed care provider
21 shall assign a qualified rehabilitation provider, as defined
22 in s. 440.491(1)(c). The managed care provider shall respond
23 to the complaint in writing within 30 days after receipt of
24 the complaint. The managed care provider shall offer as its
25 response to the complainant a substantive response or shall
26 notify the complainant, within 60 days after receipt of the
27 original complaint, that an expert opinion is required to
28 answer the complaint if an expert opinion is required. It is
29 the intent of this subsection that complaints and grievances
30 are quickly and expeditiously answered, to assure quick and
31

1 efficient delivery of disability and medical benefits, and to
2 return the injured worker to suitable gainful employment.

3 (c)~~(b)~~ The grievance procedure must be described in
4 writing and provided to the affected workers and health care
5 providers.

6 (d)~~(c)~~ At the time the workers' compensation managed
7 care arrangement is implemented, the insurer must provide
8 detailed information to workers and health care providers
9 describing how a grievance may be registered with the insurer.

10 (e)~~(d)~~ Grievances must be considered in a timely
11 manner and must be transmitted to appropriate decisionmakers
12 who have the authority to fully investigate the issue and take
13 corrective action.

14 (f)~~(e)~~ If a grievance is found to be valid, corrective
15 action must be taken promptly.

16 (g)~~(f)~~ All concerned parties must be notified of the
17 results of a grievance.

18 (h)~~(g)~~ The insurer must report annually, no later than
19 March 31, to the agency regarding its grievance procedure
20 activities for the prior calendar year. The report must be in
21 a format prescribed by the agency and must contain the number
22 of grievances filed in the past year and a summary of the
23 subject, nature, and resolution of such grievances.

24 Section 7. Subsections (1) and (3) of section 440.15,
25 Florida Statutes, 1996 Supplement, are amended to read:

26 440.15 Compensation for disability.--Compensation for
27 disability shall be paid to the employee, subject to the
28 limits provided in s. 440.12(2), as follows:

29 (1) PERMANENT TOTAL DISABILITY.--

30 (a) In case of total disability adjudged to be
31 permanent, 66 2/3 percent of the average weekly wages shall

1 be paid to the employee during the continuance of such total
2 disability.

3 (b) Only a catastrophic injury as defined in s. 440.02
4 shall, in the absence of ~~conclusive~~ proof of a substantial
5 earning capacity, constitute permanent total disability. Only
6 claimants with catastrophic injuries are eligible for
7 permanent total benefits. In no other case may permanent total
8 disability be awarded.

9 (c) In cases of permanent total disability resulting
10 from injuries that occurred prior to July 1, 1955, such
11 payments shall not be made in excess of 700 weeks.

12 (d) If an employee who is being paid compensation for
13 permanent total disability becomes rehabilitated to the extent
14 that he establishes an earning capacity, he shall be paid,
15 instead of the compensation provided in paragraph (a),
16 benefits pursuant to subsection (3). The division shall adopt
17 rules to enable a permanently and totally disabled employee
18 who may have reestablished an earning capacity to undertake a
19 trial period of reemployment without prejudicing his return to
20 permanent total status in the case that such employee is
21 unable to sustain an earning capacity.

22 (e) Thirty days prior to the end of the injured
23 worker's benefit period, the employer or carrier shall offer
24 to the injured worker, by a qualified rehabilitation provider
25 as defined in s. 440.491, a reemployment assessment as defined
26 in s. 440.491(1)(d). The purpose of the reemployment
27 assessment is to assure the injured worker that any medical
28 care rendered is appropriate to return the injured worker to
29 suitable gainful employment and to develop an earning
30 capacity.

31

1 ~~(e)~~(f)1. The employer's or carrier's right to conduct
2 vocational evaluations or testing pursuant to s. 440.491
3 continues even after the employee has been accepted or
4 adjudicated as entitled to compensation under this chapter.
5 This right includes, but is not limited to, instances in which
6 such evaluations or tests are recommended by a treating
7 physician, rehabilitation provider, or independent
8 medical-examination physician, instances warranted by a change
9 in the employee's medical condition, or instances in which the
10 employee appears to be making appropriate progress in
11 recuperation. This right may not be exercised more than once
12 every calendar year. The evaluation or testing results may be
13 used by the employer or carrier, in conjunction with the
14 medical care provider, to determine if there is a reasonable
15 probability the injured worker can be expected to return to
16 work by comparing the vocational evaluation results with
17 suitable gainful employment opportunities within the injured
18 worker's labor market area or, in the alternative, to
19 demonstrate the need for the injured worker to conduct a job
20 search campaign to demonstrate entitlement to benefits under
21 this section.

22 2. The carrier must confirm the scheduling of the
23 vocational evaluation or testing in writing, and must notify
24 employee's counsel, if any, at least 7 days before the date on
25 which vocational evaluation or testing is scheduled to occur.

26 3. Pursuant to an order of the judge of compensation
27 claims, the employer or carrier may withhold payment of
28 benefits for permanent total disability or supplements for any
29 period during which the employee willfully fails or refuses to
30 appear without good cause for the scheduled vocational
31 evaluation or testing.

1 (g)~~(f)~~1. If permanent total disability results from
2 injuries that occurred subsequent to June 30, 1955, and for
3 which the liability of the employer for compensation has not
4 been discharged under s. 440.20(12), the injured employee
5 shall receive additional weekly compensation benefits equal to
6 5 percent of his weekly compensation rate, as established
7 pursuant to the law in effect on the date of his injury,
8 multiplied by the number of calendar years since the date of
9 injury. The weekly compensation payable and the additional
10 benefits payable under this paragraph, when combined, may not
11 exceed the maximum weekly compensation rate in effect at the
12 time of payment as determined pursuant to s. 440.12(2).
13 Entitlement to these supplemental payments shall cease at age
14 62 if the employee is eligible for social security benefits
15 under 42 U.S.C. ss. 402 and 423, whether or not the employee
16 has applied for such benefits. These supplemental benefits
17 shall be paid by the division out of the Workers' Compensation
18 Administration Trust Fund when the injury occurred subsequent
19 to June 30, 1955, and before July 1, 1984. These supplemental
20 benefits shall be paid by the employer when the injury
21 occurred on or after July 1, 1984. Supplemental benefits are
22 not payable for any period prior to October 1, 1974.

23 2.a. The division shall provide by rule for the
24 periodic reporting to the division of all earnings of any
25 nature and social security income by the injured employee
26 entitled to or claiming additional compensation under
27 subparagraph 1. Neither the division nor the employer or
28 carrier shall make any payment of those additional benefits
29 provided by subparagraph 1. for any period during which the
30 employee willfully fails or refuses to report upon request by
31 the division in the manner prescribed by such rules.

1 b. The division shall provide by rule for the periodic
2 reporting to the employer or carrier of all earnings of any
3 nature and social security income by the injured employee
4 entitled to or claiming benefits for permanent total
5 disability. The employer or carrier is not required to make
6 any payment of benefits for permanent total disability for any
7 period during which the employee willfully fails or refuses to
8 report upon request by the employer or carrier in the manner
9 prescribed by such rules or if any employee who is receiving
10 permanent total disability benefits refuses to apply for or
11 cooperate with the employer or carrier in applying for social
12 security benefits.

13 3. When an injured employee receives a full or partial
14 lump-sum advance of the employee's permanent total disability
15 compensation benefits, the employee's benefits under this
16 paragraph shall be computed on the employee's weekly
17 compensation rate as reduced by the lump-sum advance.

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

19 (a) Impairment benefits.--

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

24 2. The three-member panel, in cooperation with the
25 division, shall establish and use a uniform permanent
26 impairment rating schedule. This schedule must be based on
27 medically or scientifically demonstrable findings as well as
28 the systems and criteria set forth in the American Medical
29 Association's Guides to the Evaluation of Permanent
30 Impairment; the Snellen Charts, published by American Medical
31 Association Committee for Eye Injuries; and the Minnesota

1 Department of Labor and Industry Disability Schedules. The
2 schedule should be based upon objective findings. The schedule
3 shall be more comprehensive than the AMA Guides to the
4 Evaluation of Permanent Impairment and shall expand the areas
5 already addressed and address additional areas not currently
6 contained in the guides. On August 1, 1979, and pending the
7 adoption, by rule, of a permanent schedule, Guides to the
8 Evaluation of Permanent Impairment, copyright 1977, 1971,
9 1988, by the American Medical Association, shall be the
10 temporary schedule and shall be used for the purposes hereof.
11 For injuries after July 1, 1990, pending the adoption by
12 division rule of a uniform disability rating schedule, the
13 Minnesota Department of Labor and Industry Disability Schedule
14 shall be used unless that schedule does not address an injury.
15 In such case, the Guides to the Evaluation of Permanent
16 Impairment by the American Medical Association shall be used.
17 Determination of permanent impairment under this schedule must
18 be made by a physician licensed under chapter 458, a doctor of
19 osteopathy licensed under chapters 458 and 459, a chiropractor
20 licensed under chapter 460, a podiatrist licensed under
21 chapter 461, an optometrist licensed under chapter 463, or a
22 dentist licensed under chapter 466, as appropriate considering
23 the nature of the injury. No other persons are authorized to
24 render opinions regarding the existence of or the extent of
25 permanent impairment.

26 3. All impairment income benefits shall be based on an
27 impairment rating using the impairment schedule referred to in
28 subparagraph 2. Impairment income benefits are paid weekly at
29 the compensation rate of 50 percent of the employee's
30 ~~wage average weekly temporary total disability benefit not to~~
31 ~~exceed the maximum weekly benefit under s. 440.12. An~~

1 employee's entitlement to impairment income benefits begins
2 the day after the employee reaches maximum medical improvement
3 or the expiration of temporary benefits, whichever occurs
4 earlier, and continues until the earlier of:

5 a. The expiration of a period computed at the rate of
6 9 ~~3~~ weeks for each percentage point of impairment; or
7 b. The death of the employee.

8 4. After the employee has been certified by a doctor
9 as having reached maximum medical improvement or 6 weeks
10 before the expiration of temporary benefits, whichever occurs
11 earlier, the certifying doctor shall evaluate the condition of
12 the employee and assign an impairment rating, using the
13 impairment schedule referred to in subparagraph 2.
14 Compensation is not payable for the mental, psychological, or
15 emotional injury arising out of depression from being out of
16 work. If the certification and evaluation are performed by a
17 doctor other than the employee's treating doctor, the
18 certification and evaluation must be submitted to the treating
19 doctor, and the treating doctor must indicate agreement or
20 disagreement with the certification and evaluation. The
21 certifying doctor shall issue a written report to the
22 division, the employee, and the carrier certifying that
23 maximum medical improvement has been reached, stating the
24 impairment rating, and providing any other information
25 required by the division. If the employee has not been
26 certified as having reached maximum medical improvement before
27 the expiration of 102 weeks after the date temporary total
28 disability benefits begin to accrue, the carrier shall notify
29 the treating doctor of the requirements of this section.

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

1 (b) Supplemental benefits.--
2 1. All supplemental benefits must be paid in
3 accordance with this subsection. An employee is entitled to
4 supplemental benefits as provided in this paragraph as of the
5 expiration of the impairment period, if:
6 a. The employee has an impairment rating from the
7 compensable injury of 15 ~~20~~ percent or more as determined
8 pursuant to this chapter;
9 b. The employee has not returned to work or has
10 returned to work earning less than 80 percent of the
11 employee's average weekly wage as a direct result of the
12 employee's impairment; and
13 c. The employee has in good faith attempted to obtain
14 employment commensurate with the employee's ability to perform
15 work. Evidence of full compliance with this paragraph may
16 include the following:
17 (I) Evidence the injured worker can perform work by a
18 comparison between the injured worker's age, past work
19 history, prior training, and education, together with the
20 physical restrictions imposed, with the names of employees
21 actually performing their jobs within the injured worker's
22 labor market area;
23 (II) Evidence the injured worker can perform work by
24 means of the qualifications of the job outlining the job
25 duties, functions, and other related job performance standards
26 as the employer or person empowered to offer work describes
27 them, either in writing by means of the employer's job
28 description, or by other written statements, which also may
29 include wages offered for such job; or
30 (III) A vocational evaluation or testing pursuant to
31 s. 440.491.

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 (c) Duration of temporary impairment and supplemental
24 income benefits.--The employee's eligibility for temporary
25 benefits, impairment income benefits, and supplemental
26 benefits terminates on the expiration of 401 weeks after the
27 date of injury.

28 Section 8. This act shall take effect October 1, 1997.
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542-154A-97

HOUSE SUMMARY

Revises definitions relating to workers' compensation law. Prohibits independent contractors, sole proprietors, partners, or officers in corporations engaged in the construction industry from being exempt from workers' compensation provisions. Specifies a 10-percent reduction in individual classifications for construction industry codes in 1 year. Provides for informal and formal grievance procedures. Requires employers or carriers to offer reemployment assessments to injured employees to assure provision of appropriate medical care. Revises the basis for payment of impairment income benefits and specifies evidence for determining compliance with supplemental benefits requirements. See bill for details.

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