

By Representative Morse (by request)

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.13, F.S., relating to the  
4           provision of medical services and supplies  
5           under the Workers' Compensation Law; revising  
6           definitions; deleting certain limitations on  
7           chiropractic treatment; deleting requirements  
8           that a health care provider that renders  
9           services under the Workers' Compensation Law be  
10          certified by the Division of Workers'  
11          Compensation of the Department of Labor and  
12          Employment Security; deleting limitations on  
13          the authority of a health care provider to  
14          refer an employee to another health care  
15          provider; deleting certain limitations on  
16          reimbursement for specialty services; deleting  
17          a requirement for a copayment for medical  
18          services; amending s. 440.15, F.S.; increasing  
19          the period during which an employee is eligible  
20          for temporary disability benefits; revising the  
21          criteria used to establish the schedule of  
22          impairment benefits; increasing the rate of  
23          payment for impairment benefits; deleting an  
24          exemption for certain employers with respect to  
25          an obligation that the employer rehire an  
26          employee; amending ss. 440.191 and 440.192,  
27          F.S.; providing that an employee is entitled to  
28          be represented by an attorney before a judge of  
29          compensation claims; providing that the carrier  
30          is liable for attorney's fees and costs;  
31          repealing s. 440.107(1) and (3), F.S., relating

1 to stop-work orders issued by the division to  
2 an employer; repealing s. 440.20(11), F.S.,  
3 relating to lump-sum payments in exchange for  
4 an employer's or carrier's release from  
5 liability; repealing s. 440.25(4)(j), F.S.,  
6 relating to expedited resolution of claims that  
7 are under a specified amount; providing an  
8 effective date.

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

11  
12 Section 1. Subsection (1), paragraph (a) of subsection  
13 (2), subsection (3), and paragraph (c) of subsection (14) of  
14 section 440.13, Florida Statutes, 1996 Supplement, are amended  
15 to read:

16 440.13 Medical services and supplies; penalty for  
17 violations; limitations.--

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

19 (a) "Alternate medical care" means a change in  
20 treatment or health care provider.

21 (b) "Attendant care" means care rendered by trained  
22 professional attendants which is beyond the scope of household  
23 duties. Family members may provide nonprofessional attendant  
24 care, but may not be compensated under this chapter for care  
25 that falls within the scope of household duties and other  
26 services normally and gratuitously provided by family members.  
27 "Family member" means a spouse, father, mother, brother,  
28 sister, child, grandchild, father-in-law, mother-in-law, aunt,  
29 or uncle.

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1 (c) "Carrier" means, for purposes of this section,  
2 insurance carrier, self-insurance fund or individually  
3 self-insured employer, or assessable mutual insurer.

4 (d) "Catastrophic injury" means an injury as defined  
5 in s. 440.02.

6 ~~(e) "Certified health care provider" means a health~~  
7 ~~care provider who has been certified by the division or who~~  
8 ~~has entered an agreement with a licensed managed care~~  
9 ~~organization to provide treatment to injured workers under~~  
10 ~~this section. Certification of such health care provider must~~  
11 ~~include documentation that the health care provider has read~~  
12 ~~and is familiar with the portions of the statute, impairment~~  
13 ~~guides, and rules which govern the provision of remedial~~  
14 ~~treatment, care, and attendance.~~

15 (e)~~(f)~~ "Compensable" means a determination by a  
16 carrier or judge of compensation claims that a condition  
17 suffered by an employee results from an injury arising out of  
18 and in the course of employment.

19 (f)~~(g)~~ "Emergency services and care" means services  
20 and care as defined in s. 395.002(9).

21 (g)~~(h)~~ "Health care facility" means any hospital  
22 licensed under chapter 395 and any health care institution  
23 licensed under chapter 400.

24 (h)~~(i)~~ "Health care provider" means a physician or any  
25 recognized practitioner who provides skilled services pursuant  
26 to a prescription or under the supervision or direction of a  
27 physician ~~and who has been certified by the division as a~~  
28 ~~health care provider~~. The term "health care provider" includes  
29 a health care facility.

30 (i)~~(j)~~ "Independent medical examiner" means a  
31 physician selected by ~~either an employee or a carrier to~~

1 render one or more independent medical examinations in  
2 connection with a dispute arising under this chapter.

3 (j)~~(k)~~ "Independent medical examination" means an  
4 objective evaluation of the injured employee's medical  
5 condition, including, but not limited to, impairment or work  
6 status, performed by a physician or an expert medical advisor  
7 at the request of a party, a judge of compensation claims, or  
8 the division to assist in the resolution of a dispute arising  
9 under this chapter.

10 (k)~~(l)~~ "Instance of overutilization" means a specific  
11 inappropriate service or level of service provided to an  
12 injured employee.

13 (l)~~(m)~~ "Medically necessary" means any medical service  
14 or medical supply which is used to identify or treat an  
15 illness or injury, is appropriate to the patient's diagnosis  
16 and status of recovery, and is consistent with the location of  
17 service, the level of care provided, and applicable practice  
18 parameters. The service should be widely accepted among  
19 practicing health care providers, based on scientific  
20 criteria, and determined to be reasonably safe. The service  
21 must not be of an experimental, investigative, or research  
22 nature, except in those instances in which prior approval of  
23 the Agency for Health Care Administration has been obtained.  
24 The Agency for Health Care Administration shall adopt rules  
25 providing for such approval on a case-by-case basis when the  
26 service or supply is shown to have significant benefits to the  
27 recovery and well-being of the patient.

28 (m)~~(n)~~ "Medicine" means a drug prescribed by a an  
29 ~~authorized~~ health care provider and includes only generic  
30 drugs or single-source patented drugs for which there is no  
31 generic equivalent, unless the ~~authorized~~ health care provider

1 writes or states that the brand-name drug as defined in s.  
2 465.025 is medically necessary, or is a drug appearing on the  
3 schedule of drugs created pursuant to s. 465.025(6), or is  
4 available at a cost lower than its generic equivalent.

5 (n)~~(o)~~ "Palliative care" means noncurative medical  
6 services that mitigate the conditions, effects, or pain of an  
7 injury.

8 (o)~~(p)~~ "Pattern or practice of overutilization" means  
9 repetition of instances of overutilization within a specific  
10 medical case or multiple cases by a single health care  
11 provider.

12 (p)~~(q)~~ "Peer review" means an evaluation by two or  
13 more physicians licensed under the same authority and with the  
14 same or similar specialty as the physician under review, of  
15 the appropriateness, quality, and cost of health care and  
16 health services provided to a patient, based on medically  
17 accepted standards.

18 (q)~~(r)~~ "Physician" or "doctor" means a medical doctor  
19 or doctor of osteopathy licensed under chapter 458, a  
20 physician licensed under chapter 458, an osteopath licensed  
21 under chapter 459, a chiropractor licensed under chapter 460,  
22 a podiatrist licensed under chapter 461, an optometrist  
23 licensed under chapter 463, or a dentist licensed under  
24 chapter 466, ~~each of whom must be certified by the division as~~  
25 ~~a health care provider.~~

26 (r)~~(s)~~ "Reimbursement dispute" means any disagreement  
27 between a health care provider or health care facility and  
28 carrier concerning payment for medical treatment.

29 (s)~~(t)~~ "Utilization control" means a systematic  
30 process of implementing measures that assure overall  
31 management and cost containment of services delivered.

1           (t)~~(u)~~ "Utilization review" means the evaluation of  
2 the appropriateness of both the level and the quality of  
3 health care and health services provided to a patient,  
4 including, but not limited to, evaluation of the  
5 appropriateness of treatment, hospitalization, or office  
6 visits based on medically accepted standards. Such evaluation  
7 must be accomplished by means of a system that identifies the  
8 utilization of medical services based on medically accepted  
9 standards as established by medical consultants with  
10 qualifications similar to those providing the care under  
11 review, and that refers patterns and practices of  
12 overutilization to the division.

13           (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

14           (a) Subject to the limitations specified elsewhere in  
15 this chapter, the employer shall furnish to the employee such  
16 medically necessary remedial treatment, care, and attendance  
17 for such period as the nature of the injury or the process of  
18 recovery may require, including medicines, medical supplies,  
19 durable medical equipment, orthoses, prostheses, and other  
20 medically necessary apparatus. Remedial treatment, care, and  
21 attendance, including work-hardening programs or  
22 pain-management programs accredited by the Commission on  
23 Accreditation of Rehabilitation Facilities or Joint Commission  
24 on the Accreditation of Health Organizations or  
25 pain-management programs affiliated with medical schools,  
26 shall be considered as covered treatment only when such care  
27 is given based on a referral by a physician as defined in this  
28 chapter. Each facility shall maintain outcome data, including  
29 work status at discharges, total program charges, total number  
30 of visits, and length of stay. ~~The department shall utilize  
31 such data and report to the President of the Senate and the~~

1 ~~Speaker of the House of Representatives regarding the efficacy~~  
2 ~~and cost-effectiveness of such program, no later than October~~  
3 ~~1, 1994. Medically necessary treatment, care, and attendance~~  
4 ~~does not include chiropractic services in excess of 18~~  
5 ~~treatments or rendered 8 weeks beyond the date of the initial~~  
6 ~~chiropractic treatment, whichever comes first, unless the~~  
7 ~~carrier authorizes additional treatment or the employee is~~  
8 ~~catastrophically injured.~~

9 (3) PROVIDER ELIGIBILITY/AUTHORIZATION.--

10 ~~(a) As a condition to eligibility for payment under~~  
11 ~~this chapter, a health care provider who renders services must~~  
12 ~~be a certified health care provider and must receive~~  
13 ~~authorization from the carrier before providing treatment.~~  
14 ~~This paragraph does not apply to emergency care. The division~~  
15 ~~shall adopt rules to implement the certification of health~~  
16 ~~care providers. As a one-time prerequisite to obtaining~~  
17 ~~certification, the division shall require each physician to~~  
18 ~~demonstrate proof of completion of a minimum 5-hour course~~  
19 ~~that covers the subject areas of cost containment, utilization~~  
20 ~~control, ergonomics, and the practice parameters adopted by~~  
21 ~~the division governing the physician's field of practice. The~~  
22 ~~division shall coordinate with the Agency for Health Care~~  
23 ~~Administration, the Florida Medical Association, the Florida~~  
24 ~~Osteopathic Medical Association, the Florida Chiropractic~~  
25 ~~Association, the Florida Podiatric Medical Association, the~~  
26 ~~Florida Optometric Association, the Florida Dental~~  
27 ~~Association, and other health professional organizations and~~  
28 ~~their respective boards as deemed necessary by the Agency for~~  
29 ~~Health Care Administration in complying with this subsection.~~  
30 ~~No later than October 1, 1994, the division shall adopt rules~~  
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1 ~~regarding the criteria and procedures for approval of courses~~  
2 ~~and the filing of proof of completion by the physicians.~~  
3       (a)~~(b)~~ A health care provider who renders emergency  
4 care must notify the carrier by the close of the third  
5 business day after it has rendered such care. If the emergency  
6 care results in admission of the employee to a health care  
7 facility, the health care provider must notify the carrier by  
8 telephone within 24 hours after initial treatment. Emergency  
9 care is not compensable under this chapter unless the injury  
10 requiring emergency care arose as a result of a work-related  
11 accident. Pursuant to chapter 395, all licensed physicians and  
12 health care providers in this state shall be required to make  
13 their services available for emergency treatment of any  
14 employee eligible for workers' compensation benefits. To  
15 refuse to make such treatment available is cause for  
16 revocation of a license.

17       ~~(c) A health care provider may not refer the employee~~  
18 ~~to another health care provider, diagnostic facility, therapy~~  
19 ~~center, or other facility without prior authorization from the~~  
20 ~~carrier, except when emergency care is rendered. Any referral~~  
21 ~~must be to a health care provider that has been certified by~~  
22 ~~the division, unless the referral is for emergency treatment.~~

23       ~~(d) A carrier must respond, by telephone or in~~  
24 ~~writing, to a request for authorization by the close of the~~  
25 ~~third business day after receipt of the request. A carrier who~~  
26 ~~fails to respond to a written request for authorization for~~  
27 ~~referral for medical treatment by the close of the third~~  
28 ~~business day after receipt of the request consents to the~~  
29 ~~medical necessity for such treatment. All such requests must~~  
30 ~~be made to the carrier. Notice to the carrier does not include~~  
31 ~~notice to the employer.~~



1           ~~(e) Carriers shall adopt procedures for receiving,~~  
2 ~~reviewing, documenting, and responding to requests for~~  
3 ~~authorization. Such procedures shall be for a health care~~  
4 ~~provider certified under this section.~~

5           (b)(f) By accepting payment under this chapter for  
6 treatment rendered to an injured employee, a health care  
7 provider consents to the jurisdiction of the division as set  
8 forth in subsection (11) and to the submission of all records  
9 and other information concerning such treatment to the  
10 division in connection with a reimbursement dispute, audit, or  
11 review as provided by this section. The health care provider  
12 must further agree to comply with any decision of the division  
13 rendered under this section.

14           (c)(g) The employee is not liable for payment for  
15 medical treatment or services provided pursuant to this  
16 section except as otherwise provided in this section.

17           ~~(h) The provisions of s. 455.236 are applicable to~~  
18 ~~referrals among health care providers, as defined in~~  
19 ~~subsection (1), treating injured workers.~~

20           ~~(i) Notwithstanding paragraph (d), a claim for~~  
21 ~~specialist consultations, surgical operations,~~  
22 ~~physiotherapeutic or occupational therapy procedures, X-ray~~  
23 ~~examinations, or special diagnostic laboratory tests that cost~~  
24 ~~more than \$1,000 and other specialty services that the~~  
25 ~~division identifies by rule is not valid and reimbursable~~  
26 ~~unless the services have been expressly authorized by the~~  
27 ~~carrier, or unless the carrier has failed to respond within 10~~  
28 ~~days to a written request for authorization, or unless~~  
29 ~~emergency care is required. The insurer shall not refuse to~~  
30 ~~authorize such consultation or procedure unless the health~~  
31 ~~care provider or facility is not authorized or certified or~~

1 ~~unless an expert medical advisor has determined that the~~  
2 ~~consultation or procedure is not medically necessary or~~  
3 ~~otherwise compensable under this chapter. Authorization of a~~  
4 ~~treatment plan does not constitute express authorization for~~  
5 ~~purposes of this section, except to the extent the carrier~~  
6 ~~provides otherwise in its authorization procedures. This~~  
7 ~~paragraph does not limit the carrier's obligation to identify~~  
8 ~~and disallow overutilization or billing errors.~~

9       (d)~~(j)~~ Notwithstanding anything in this chapter to the  
10 contrary, a sick or injured employee shall be entitled, at all  
11 times, to free, full, and absolute choice in the selection of  
12 the pharmacy or pharmacist dispensing and filling  
13 prescriptions for medicines required under this chapter. It is  
14 expressly forbidden for the division, an employer, or a  
15 carrier, or any agent or representative of the division, an  
16 employer, or a carrier to select the pharmacy or pharmacist  
17 which the sick or injured employee must use; condition  
18 coverage or payment on the basis of the pharmacy or pharmacist  
19 utilized; or to otherwise interfere in the selection by the  
20 sick or injured employee of a pharmacy or pharmacist.

21       (14) PAYMENT OF MEDICAL FEES.--

22       ~~(c) Notwithstanding any other provision of this~~  
23 ~~chapter, following overall maximum medical improvement from an~~  
24 ~~injury compensable under this chapter, the employee is~~  
25 ~~obligated to pay a copayment of \$10 per visit for medical~~  
26 ~~services. The copayment shall not apply to emergency care~~  
27 ~~provided to the employee.~~

28       Section 2. Paragraph (a) of subsection (2), paragraph  
29 (a) of subsection (3), paragraph (b) of subsection (4), and  
30 subsection (6) of section 440.15, Florida Statutes, 1996  
31 Supplement, are amended to read:

1           440.15 Compensation for disability.--Compensation for  
2 disability shall be paid to the employee, subject to the  
3 limits provided in s. 440.12(2), as follows:

4           (2) TEMPORARY TOTAL DISABILITY.--

5           (a) In case of disability total in character but  
6 temporary in quality,  $66 \frac{2}{3}$  percent of the average weekly  
7 wages shall be paid to the employee during the continuance  
8 thereof, not to exceed 182 ~~104~~ weeks except as provided in  
9 this subsection, s. 440.12(1), and s. 440.14(3). Once the  
10 employee reaches the maximum number of weeks allowed, or the  
11 employee reaches the date of maximum medical improvement,  
12 whichever occurs earlier, temporary disability benefits shall  
13 cease and the injured worker's permanent impairment shall be  
14 determined.

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

16           (a) Impairment benefits.--

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

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

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

23         3. All impairment income benefits shall be based on an  
24 impairment rating using the impairment schedule referred to in  
25 subparagraph 2. Impairment income benefits are paid weekly at  
26 the rate of 66 2/3 ~~50~~ percent of the employee's ~~average~~ weekly  
27 salary ~~temporary total disability benefit~~ not to exceed the  
28 maximum weekly benefit under s. 440.12. An employee's  
29 entitlement to impairment income benefits begins the day after  
30 the employee reaches maximum medical improvement or the

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1 expiration of temporary benefits, whichever occurs earlier,  
2 and continues until the earlier of:

3       a. The expiration of a period computed at 254 ~~the rate~~  
4 ~~of 3 weeks for each percentage point of impairment;~~ or  
5       b. The death of the employee.

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

12 Compensation is ~~not~~ payable for the mental, psychological, or  
13 emotional injury arising out of depression from being out of  
14 work because of the employee's accident. If the certification  
15 and evaluation are performed by a doctor other than the  
16 employee's treating doctor, the certification and evaluation  
17 must be submitted to the treating doctor, and the treating  
18 doctor must indicate agreement or disagreement with the  
19 certification and evaluation, but the opinion of the second  
20 doctor counts in the final decision of impairment. 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 182 ~~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           (4) TEMPORARY PARTIAL DISABILITY.--

2           (b) Such benefits shall be paid during the continuance  
3 of such disability, not to exceed a period of 182 ~~104~~ weeks,  
4 as provided by this subsection and subsection (2). Once the  
5 injured employee reaches the maximum number of weeks,  
6 temporary disability benefits cease and the injured worker's  
7 permanent impairment must be determined.

8           (6) OBLIGATION TO REHIRE.--If the employer has not in  
9 good faith made available to the employee, within a 35-mile  
10 ~~100-mile~~ radius of the employee's residence, work appropriate  
11 to the employee's physical limitations within 30 days after  
12 the carrier notifies the employer of maximum medical  
13 improvement and the employee's physical limitations, the  
14 employer shall pay to the division for deposit into the  
15 Workers' Compensation Administration Trust Fund a fine of \$250  
16 for every \$5,000 of the employer's workers' compensation  
17 premium or payroll, not to exceed ~~\$10,000~~ \$2,000 per  
18 violation, depending on business size and finances, as the  
19 division requires by rule. The employer is not subject to this  
20 subsection if the employee is receiving permanent total  
21 disability benefits ~~or if the employer has 50 or fewer~~  
22 ~~employees.~~

23           Section 3. Paragraph (d) of subsection (2) of section  
24 440.191, Florida Statutes, is amended to read:

25           440.191 Employee Assistance and Ombudsman Office.--

26           (2)

27           (d) The Employee Assistance and Ombudsman Office may  
28 assign an ombudsman to assist the employee in resolving the  
29 dispute. If the dispute is not resolved within 30 days after  
30 the employee contacts the office, the ombudsman shall, at the  
31 employee's request, assist the employee in drafting a petition

1 for benefits and explain the procedures for filing petitions.  
2 The employee is entitled to be represented by an attorney and  
3 the employer or carrier is liable for attorney's fees and  
4 costs.The Employee Assistance and Ombudsman Office may not  
5 represent employees before the judges of compensation claims.  
6 ~~An employer or carrier may not pay any attorneys' fees on~~  
7 ~~behalf of the employee for services rendered or costs incurred~~  
8 ~~in connection with this section, unless expressly authorized~~  
9 ~~elsewhere in this chapter.~~

10 Section 4. Subsection (6) of section 440.192, Florida  
11 Statutes, is amended to read:

12 440.192 Procedure for resolving benefit disputes.--

13 (6) If the claimant is not represented by counsel, the  
14 Office of the Judges of Compensation Claims may request the  
15 Employee Assistance and Ombudsman Office to assist the  
16 claimant in filing a petition that meets the requirements of  
17 this section. If the claimant is represented by counsel, the  
18 employer or carrier must pay the attorney's fees.

19 Section 5. Subsections (1) and (3) of section 440.107,  
20 Florida Statutes, are repealed.

21 Section 6. Subsection (11) of section 440.20, Florida  
22 Statutes, is repealed.

23 Section 7. Paragraph (j) of subsection (4) of section  
24 440.25, Florida Statutes, is repealed.

25 Section 8. This act shall take effect upon becoming a  
26 law.

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HOUSE SUMMARY

Amends the Workers' Compensation Law. Revises definitions and requirements relating to the provision of medical services and supplies. Deletes requirement that health care providers under the act be certified. Removes limitations on health care provider referrals. Deletes limitations on reimbursement for specialty services and a requirement for a copayment for medical services. Increases eligibility period for temporary disability benefits. Revises criteria for establishing impairment benefits. Increases the rate of payment for impairment benefits. Deletes an exemption for certain employers relating to an obligation to rehire an employee. Provides for representation by an attorney before a judge of compensation claims. Provides carrier liability for attorney's fees and costs. Repeals several statutes relating to stop-work orders, lump-sum payments, and expedited resolution of claims under a specified amount.