

By Senator King

8-1813-99

See HB

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. 440.09, F.S.; excluding employees
5 covered under the Defense Base Act; amending s.
6 440.102, F.S.; providing requirements and
7 procedures for conducting certain drug tests
8 and for reporting and preserving results of
9 drug tests; requiring certain contractors under
10 state contract to implement a drug-free
11 workplace; amending s. 440.12, F.S.; providing
12 for electronic payment of compensation
13 payments; amending s. 440.13, F.S.; revising
14 requirements for submission of certain medical
15 reports and bills; granting rehabilitation
16 providers access to medical records; amending
17 s. 440.134, F.S.; authorizing individually
18 self-insured employers to provide medical
19 benefits with or without managed care
20 arrangements; amending s. 440.14, F.S.;
21 requiring employees to provide certain loss of
22 earnings information for purposes of certain
23 average weekly wage calculations; amending s.
24 440.15, F.S.; clarifying provisions relating to
25 permanent total disability supplemental
26 benefits; amending s. 440.185, F.S.;
27 authorizing the division to contract with a
28 private entity for collection of certain policy
29 information; amending s. 440.192, F.S.;
30 revising requirements and procedures for filing
31 petitions for benefits; amending s. 440.20,

1 F.S.; providing for payment of compensation by
2 direct deposit under certain circumstances;
3 revising the period for payment; revising lump
4 sum settlement requirements; amending s.
5 440.25, F.S.; imposing a timeframe for certain
6 pretrial hearings; amending s. 440.271, F.S.;
7 directing the First District Court of Appeals
8 to establish a specialized division for certain
9 purposes; amending s. 440.34, F.S.; revising
10 terms to conform; amending ss. 440.49 and
11 440.51, F.S.; providing definitions relating to
12 net premiums; amending s. 627.311, F.S.;
13 providing for use of surplus for purposes of
14 funding certain deficits; repealing s.
15 440.45(3), F.S., relating to judges of
16 compensation claims serving as docketing
17 judges; providing effective dates.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (27) and paragraph (f) of
22 subsection (37) of section 440.02, Florida Statutes, 1998
23 Supplement, are amended to read:

24 440.02 Definitions.--When used in this chapter, unless
25 the context clearly requires otherwise, the following terms
26 shall have the following meanings:

27 (27) "Wages" means the money rate at which the service
28 rendered is recompensed under the contract of hiring in force
29 at the time of the injury and includes only the wages earned
30 and reported for federal income tax purposes on the job where
31 the employee is injured and the wages lost as a result of the

1 injury at any other concurrent employment where he or she is
2 also subject to workers' compensation coverage and benefits,
3 together with the reasonable value of housing furnished to the
4 employee by the employer which is the permanent year-round
5 residence of the employee, and gratuities to the extent
6 reported to the employer in writing as taxable income received
7 in the course of employment from others than the employer and
8 employer contributions for health insurance for the employee
9 or the employee's dependents. However, housing furnished to
10 migrant workers shall be included in wages unless provided
11 after the time of injury. In employment in which an employee
12 receives consideration for housing, the reasonable value of
13 such housing compensation shall be the actual cost to the
14 employer or based upon the Fair Market Rent Survey promulgated
15 pursuant to s. 8 of the Housing and Urban Development Act of
16 1974, whichever is less. However, if employer contributions
17 for housing or health insurance are continued after the time
18 of the injury, the contributions are not "wages" for the
19 purpose of calculating an employee's average weekly wage.

20 (37) "Catastrophic injury" means a permanent
21 impairment constituted by:

22 (f) Any other injury that results in the Social
23 Security Administration determining an employee eligible ~~would~~
24 ~~otherwise qualify under this chapter of a nature and severity~~
25 ~~that would qualify an employee~~ to receive disability income
26 benefits under Title II or supplemental security income
27 benefits under Title XVI of the federal Social Security Act as
28 the Social Security Act existed on July 1, 1992, without
29 regard to any time limitations provided under that act. In
30 order for an injury to qualify as a "catastrophic injury"
31 under this paragraph, there must be a causal connection

1 between the injury which serves as the basis for a Social
2 Security Administration determination of eligibility and the
3 compensable injury.

4 Section 2. Subsection (2) of section 440.09, Florida
5 Statutes, 1998 Supplement, is amended to read:

6 440.09 Coverage.--

7 (2) Benefits are not payable in respect of the
8 disability or death of any employee covered by the Federal
9 Employer's Liability Act, the Longshoremen's and Harbor
10 Worker's Compensation Act, the Defense Base Act, or the Jones
11 Act.

12 Section 3. Paragraphs (d), (e), and (o) of subsection
13 (5) of section 440.112, Florida Statutes, are amended, and
14 subsection (15) is added to that section, to read:

15 440.102 Drug-free workplace program requirements.--The
16 following provisions apply to a drug-free workplace program
17 implemented pursuant to law or to rules adopted by the Agency
18 for Health Care Administration:

19 (5) PROCEDURES AND EMPLOYEE PROTECTION.--All specimen
20 collection and testing for drugs under this section shall be
21 performed in accordance with the following procedures:

22 (d)1. Each initial drug test and confirmation test
23 conducted under this section, not including the taking or
24 collecting of a specimen to be tested, shall be conducted by a
25 licensed or certified laboratory as described in subsection
26 (9), except an initial drug test may be conducted on the
27 employer's premises in accordance with procedures in this
28 subsection and rules and guidelines adopted by the Agency for
29 Health Care Administration for the protection of employees.
30 If the initial drug test is conducted on the employer's
31 premises and produces a positive test result, a confirmation

1 test must be conducted by a licensed or certified laboratory
2 as described in subsection (9). An employer shall not take
3 any adverse action against an employee based on an initial
4 drug test producing positive results until a confirmation test
5 producing positive results has been conducted.

6 2. An employer having initial drug tests conducted on
7 the employer's premises shall:

8 a. Conduct the test in view of the person being tested
9 if possible. If it is not possible to conduct the test in view
10 of the person being tested, the person conducting the test
11 must secure the specimen, in view of the person being tested,
12 with a forensic tamperproof seal until the test is conducted.

13 b. Provide the results to the person tested.

14 c. Maintain records as specified by the Agency for
15 Health Care Administration sufficient to demonstrate that the
16 employer is conducting the types of tests required by this
17 section.

18 (e) A specimen for a drug test may be taken or
19 collected by any of the following persons:

20 1. A physician, a physician assistant, a registered
21 professional nurse, a licensed practical nurse, or a nurse
22 practitioner or a certified paramedic who is present at the
23 scene of an accident for the purpose of rendering emergency
24 medical service or treatment;~~—~~

25 2. A qualified person employed by a licensed or
26 certified laboratory as described in subsection (9); ~~or—~~

27 3. In addition to those persons authorized under
28 subparagraphs 1. and 2., employees specially trained to
29 collect specimens and conduct drug tests or other persons
30 similarly trained, in the case of an initial drug test
31 conducted on the employer's premises. Employees or other

1 persons utilized to conduct an initial drug test must have
2 received a minimum of 2 hours of training in the
3 administration of a drug test, preparation of the collection
4 site, collection of specimens, detection of any tampering or
5 adulteration of the specimen, labeling of specimens, and
6 preservation of the chain of custody for specimens, or other
7 specific training as required by the Agency for Health Care
8 Administration.

9 (o) If an employer conducts drug testing that is
10 ~~conducted~~ based on reasonable suspicion, the employer shall
11 promptly detail in writing the circumstances which formed the
12 basis of the determination that reasonable suspicion existed
13 to warrant the testing. A copy of this documentation shall be
14 given to the employee upon request and the original
15 documentation shall be kept confidential by the employer
16 pursuant to subsection (8) and shall be retained by the
17 employer for at least 1 year.

18 (15) STATE CONSTRUCTION CONTRACTS.--Contractors, as
19 defined and regulated in parts I and II of chapter 489, with
20 more than three employees performing construction work
21 pursuant to a state contract in excess of \$10,000, which
22 contract was let pursuant to chapter 235, chapter 255, or
23 chapter 944, shall be required to implement a drug-free
24 workplace program in accordance with the requirements of this
25 section.

26 Section 4. Subsection (1) of section 440.12, Florida
27 Statutes, is amended to read:

28 440.12 Time for commencement and limits on weekly rate
29 of compensation.--

30 (1) No compensation shall be allowed for the first 7
31 days of the disability, except benefits provided for in s.

1 440.13. However, if the injury results in disability of more
2 than 21 days, compensation shall be allowed from the
3 commencement of the disability. All weekly compensation
4 payments, except for the first payment, shall be paid by check
5 or, if authorized by the employee, deposited directly into the
6 employee's bank account or a bank account set up by the
7 carrier for the employee.

8 Section 5. Paragraphs (b) and (c) of subsection (4) of
9 section 440.13, Florida Statutes, 1998 Supplement, are amended
10 to read:

11 440.13 Medical services and supplies; penalty for
12 violations; limitations.--

13 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
14 DIVISION.--

15 (b) Upon the request of the Division of Workers'
16 Compensation, each medical report or bill obtained or received
17 by the employer, the carrier, or the injured employee, or the
18 attorney for the employer, carrier, or injured employee, with
19 respect to the remedial treatment or care of the injured
20 employee, including any report of an examination, diagnosis,
21 or disability evaluation, must be filed with the Division of
22 Workers' Compensation pursuant to rules adopted by the
23 division. The health care provider shall ~~also~~ furnish to the
24 injured employee or to his or her attorney, on demand, a copy
25 of his or her office chart, records, and reports, and may
26 charge the injured employee an amount authorized by the
27 division for the copies. Each ~~such~~ health care provider shall
28 provide to the division ~~any additional~~ information about the
29 remedial treatment, care, and attendance that the division
30 reasonably requests.

31

1 (c) It is the policy for the administration of the
2 workers' compensation system that there be reasonable access
3 to medical information by all parties to facilitate the
4 self-executing features of the law. Notwithstanding the
5 limitations in s. 455.667 and subject to the limitations in s.
6 381.004, upon the request of the employer, the carrier, a
7 rehabilitation provider, or the attorney for the employer or
8 carrier ~~either of them~~, the medical records of an injured
9 employee must be furnished to those persons and the medical
10 condition of the injured employee must be discussed with those
11 persons, if the records and the discussions are restricted to
12 conditions relating to the workplace injury. Any such
13 discussions may be held before or after the filing of a claim
14 without the knowledge, consent, or presence of any other party
15 or his or her agent or representative. A health care provider
16 who willfully refuses to provide medical records or to discuss
17 the medical condition of the injured employee, after a
18 reasonable request is made for such information pursuant to
19 this subsection, shall be subject by the division to one or
20 more of the penalties set forth in paragraph (8)(b).

21 Section 6. Paragraph (b) of subsection (2) of section
22 440.134, Florida Statutes, 1998 Supplement, is amended to
23 read:

24 440.134 Workers' compensation managed care
25 arrangement.--

26 (2)

27 (b) Effective January 1, 1997, the employer shall,
28 subject to the limitations specified elsewhere in this
29 chapter, furnish to the employee solely through managed care
30 arrangements such medically necessary remedial treatment,
31 care, and attendance for such period as the nature of the

1 injury or the process of recovery requires pursuant to s.
2 440.13(2)(a) and (b). An employer that has secured coverage
3 under s. 440.38(1)(b) as an individual self-insurer or under
4 s. 440.38(6) shall furnish such medically necessary remedial
5 treatment, care, and attendance to the employee for such a
6 period as the nature or process of recovery may require
7 pursuant to s. 440.13(2)(a) and (b) through managed care
8 arrangements or without managed care arrangements. Nothing in
9 this subsection shall be construed to prevent an individual
10 self-insurer from implementing or continuing to use managed
11 care arrangements in accordance with this section.

12 Section 7. Subsection (5) is added to section 440.14,
13 Florida Statutes, to read:

14 440.14 Determination of pay.--

15 (5) If lost wages from concurrent employment are used
16 in calculating the average weekly wage, the employee shall be
17 responsible for providing evidence of the loss of earnings
18 from the concurrent employment to the employer or carrier
19 within 45 days after the date of injury. Failure to provide
20 such information will result in exclusion of the earnings from
21 concurrent employment from the average weekly wage
22 calculation.

23 Section 8. Paragraph (f) of subsection (1) of section
24 440.15, Florida Statutes, 1998 Supplement, is amended to read:

25 440.15 Compensation for disability.--Compensation for
26 disability shall be paid to the employee, subject to the
27 limits provided in s. 440.12(2), as follows:

28 (1) PERMANENT TOTAL DISABILITY.--

29 (f)1. If permanent total disability results from
30 injuries that occurred subsequent to June 30, 1955, and for
31 which the liability of the employer for compensation has not

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

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

30 | b. The division shall provide by rule for the periodic
31 | reporting to the employer or carrier of all earnings of any

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

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

16 Section 9. Subsection (7) of section 440.185, Florida
17 Statutes, 1998 Supplement, is amended to read:

18 440.185 Notice of injury or death; reports; penalties
19 for violations.--

20 (7) Every carrier shall file with the division within
21 21 days after the issuance of a policy or contract of
22 insurance such policy information as the division may require,
23 including notice of whether the policy is a minimum premium
24 policy. Notice of cancellation or expiration of a policy as
25 set out in s. 440.42(2) shall be mailed to the division in
26 accordance with rules promulgated by the division under
27 chapter 120. The division may contract with a private entity
28 for the collection of policy information required to be filed
29 by carriers pursuant to this subsection and the receipt of
30 notices of cancellation or expiration of a policy required to
31 be filed by carriers pursuant to s. 440.42(2). The provision

1 of policy information or notices of cancellation or expiration
2 to the contracted private entity shall satisfy the filing
3 requirements of this subsection and s. 440.42(2).

4 Section 10. Subsections (1), (3), (4), and (8) of
5 section 440.192, Florida Statutes, are amended to read:

6 440.192 Procedure for resolving benefit disputes.--

7 (1) Subject to s. 440.191, any employee who has not
8 received a benefit to which the employee believes she or he is
9 entitled under this chapter shall file by certified mail with
10 the appropriate local Office of the Judges of Compensation
11 Claims a petition for benefits that meets the requirements of
12 this section. The division shall provide information to
13 employees regarding the location of the appropriate Office of
14 the Judges of Compensation Claims for purposes of filing a
15 petition for benefits. The employee shall also serve copies
16 of the petition for benefits by certified mail upon the
17 employer, the employer's carrier, and the division in
18 Tallahassee a petition for benefits that meets the
19 requirements of this section. The division shall refer the
20 petition to the Office of the Judges of Compensation Claims.

21 (3) A petition for benefits may contain a claim for
22 past benefits and continuing benefits in any benefit category,
23 but is limited to those in default and ripe, due, and owing on
24 the date the petition is filed. If the employer has elected to
25 satisfy its obligation to provide medical treatment, care, and
26 attendance through a managed care arrangement designated under
27 this chapter, the employee must exhaust all managed care
28 grievance procedures before filing a petition for benefits
29 under this section. Failure to exhaust managed care grievance
30 procedures shall result in dismissal of the petition without
31 prejudice.

1 (4) The petition must include a certification by the
2 claimant or, if the claimant is represented by counsel, the
3 claimant's attorney, stating that the claimant, ~~or attorney if~~
4 ~~the claimant is represented by counsel,~~ has made a good faith
5 effort to resolve the dispute and that the claimant or
6 attorney was unable to resolve the dispute with the carrier.
7 The petition shall also include a certification by the
8 claimant or, if the claimant is represented by counsel, the
9 claimant's attorney, stating that the managed care grievance
10 procedures have been exhausted. If such certifications are
11 not included, the petition shall be dismissed without
12 prejudice.

13 (8) Within 14 days after receipt of a petition for
14 benefits by certified mail, the carrier must either pay the
15 requested benefits without prejudice to its right to deny
16 within 120 days from receipt of the petition or file a
17 response to petition ~~notice of denial~~ with the division. The
18 carrier must list all benefits requested but not paid and
19 explain its justification for nonpayment in the response to
20 petition ~~notice of denial~~. A carrier that does not deny
21 compensability in accordance with s. 440.20(4) is deemed to
22 have accepted the employee's injuries as compensable, unless
23 it can establish material facts relevant to the issue of
24 compensability that could not have been discovered through
25 reasonable investigation within the 120-day period. The
26 carrier shall provide copies of the response ~~notice~~ to the
27 filing party, employer, and claimant by certified mail.

28 Section 11. Paragraph (a) of subsection (1),
29 subsections (6) and (7), and paragraph (a) of subsection (11)
30 of section 440.20, Florida Statutes, 1998 Supplement, are
31 amended to read:

1 440.20 Time for payment of compensation; penalties for
2 late payment.--

3 (1)(a) Unless it denies compensability or entitlement
4 to benefits, the carrier shall pay compensation directly to
5 the employee as required by ss. 440.14, 440.15, and 440.16, in
6 accordance with the obligations set forth in such sections. If
7 authorized by the employee, the carrier's obligation to pay
8 compensation directly to the employee is satisfied when the
9 carrier directly deposits, by electronic transfer or other
10 means, compensation into the employee's bank account or into a
11 bank account which has been set up by the carrier for the
12 employee. Compensation by direct deposit shall be deemed paid
13 on the date the funds become available for withdrawal by the
14 employee.

15 (6) If any installment of compensation for death or
16 dependency benefits, disability, permanent impairment, or wage
17 loss payable without an award is not paid within 7 days after
18 it becomes due, as provided in subsection (2), subsection (3),
19 or subsection (4), there shall be added to such unpaid
20 installment a punitive penalty of an amount equal to 20
21 percent of the unpaid installment or \$5, which shall be paid
22 at the same time as, but in addition to, such installment of
23 compensation, unless notice is filed under subsection (4) or
24 unless such nonpayment results from conditions over which the
25 employer or carrier had no control. When any installment of
26 compensation payable without an award has not been paid within
27 7 days after it became due and the claimant concludes the
28 prosecution of the claim before a judge of compensation claims
29 without having specifically claimed additional compensation in
30 the nature of a penalty under this section, the claimant will
31 be deemed to have acknowledged that, owing to conditions over

1 | which the employer or carrier had no control, such installment
2 | could not be paid within the period prescribed for payment and
3 | to have waived the right to claim such penalty. However,
4 | during the course of a hearing, the judge of compensation
5 | claims shall on her or his own motion raise the question of
6 | whether such penalty should be awarded or excused. The
7 | division may assess without a hearing the punitive penalty
8 | against either the employer or the insurance carrier,
9 | depending upon who was at fault in causing the delay. The
10 | insurance policy cannot provide that this sum will be paid by
11 | the carrier if the division or the judge of compensation
12 | claims determines that the punitive penalty should be made by
13 | the employer rather than the carrier. Any additional
14 | installment of compensation paid by the carrier pursuant to
15 | this section shall be paid directly to the employee by check,
16 | or, if authorized by the employee, by direct deposit into the
17 | employee's bank account or into a bank account which has been
18 | set up by the carrier for the employee.

19 | (7) If any compensation, payable under the terms of an
20 | award, is not paid within 15 ~~7~~ days after it becomes due,
21 | there shall be added to such unpaid compensation an amount
22 | equal to 20 percent thereof, which shall be paid at the same
23 | time as, but in addition to, such compensation, unless review
24 | of the compensation order making such award is had as provided
25 | in s. 440.25.

26 | (11)(a) Upon joint petition of all interested parties,
27 | a lump-sum payment in exchange for the employer's or carrier's
28 | release from liability for future medical expenses, as well as
29 | future payments of compensation expenses and any other
30 | benefits provided under this chapter, shall be allowed at any
31 | time in any case in which the employer or carrier has filed a

1 written response to petition ~~notice of denial~~ within 120 days
2 after the employer receives notice ~~date~~ of the injury, and the
3 judge of compensation claims at a hearing to consider the
4 settlement proposal finds a justiciable controversy as to
5 legal or medical compensability of the claimed injury or the
6 alleged accident. A hearing shall not be required whenever the
7 claimant is represented by an attorney and whenever all
8 parties stipulate that a hearing is not necessary.The
9 employer or carrier may not pay any attorney's fees on behalf
10 of the claimant for any settlement under this section unless
11 expressly authorized elsewhere in this chapter. Upon the joint
12 petition of all interested parties and after giving due
13 consideration to the interests of all interested parties, the
14 judge of compensation claims may enter a compensation order
15 approving and authorizing the discharge of the liability of
16 the employer for compensation and remedial treatment, care,
17 and attendance, as well as rehabilitation expenses, by the
18 payment of a lump sum. Such a compensation order so entered
19 upon joint petition of all interested parties is not subject
20 to modification or review under s. 440.28. If the settlement
21 proposal together with supporting evidence is not approved by
22 the judge of compensation claims, it shall be considered void.
23 Upon approval of a lump-sum settlement under this subsection,
24 the judge of compensation claims shall send a report to the
25 Chief Judge of the amount of the settlement and a statement of
26 the nature of the controversy. The Chief Judge shall keep a
27 record of all such reports filed by each judge of compensation
28 claims and shall submit to the Legislature a summary of all
29 such reports filed under this subsection annually by September
30 15.
31

1 Section 12. Paragraph (a) of subsection (4) of section
2 440.25, Florida Statutes, is amended to read:

3 440.25 Procedures for mediation and hearings.--

4 (4)(a) If, on the 10th day following commencement of
5 mediation, the questions in dispute have not been resolved,
6 the judge of compensation claims shall hold a pretrial
7 hearing. The judge of compensation claims shall give the
8 interested parties at least 7 days' advance notice of the
9 pretrial hearing which shall be held no later than 45 days
10 after the filing of the petition for benefits ~~by mail~~. At the
11 pretrial hearing, the judge of compensation claims shall,
12 subject to paragraph (b), set a date for the final hearing
13 that allows the parties at least 30 days to conduct discovery
14 unless the parties consent to an earlier hearing date.

15 Section 13. Section 440.271, Florida Statutes, is
16 amended to read:

17 440.271 Appeal of order of judge of compensation
18 claims.--Review of any order of a judge of compensation claims
19 entered pursuant to this chapter shall be by appeal to the
20 District Court of Appeal, First District. To promote
21 consistency and uniformity in the application of this chapter,
22 the District Court of Appeal, First District, shall establish
23 a specialized division to hear all appeals of orders of judges
24 of compensation claims. The court may structure the division
25 to hear workers' compensation appeals exclusively, or in
26 addition to other appeals. Appeals shall be filed in
27 accordance with rules of procedure prescribed by the Supreme
28 Court for review of such orders. The division shall be given
29 notice of any proceedings pertaining to s. 440.25, regarding
30 indigency, or s. 440.49, regarding the Special Disability

31

1 Trust Fund, and shall have the right to intervene in any
2 proceedings.

3 Section 14. Subsection (3) of section 440.34, Florida
4 Statutes, is amended to read:

5 440.34 Attorney's fees; costs.--

6 (3) If the claimant should prevail in any proceedings
7 before a judge of compensation claims or court, there shall be
8 taxed against the employer the reasonable costs of such
9 proceedings, not to include the attorney's fees of the
10 claimant. A claimant shall be responsible for the payment of
11 her or his own attorney's fees, except that a claimant shall
12 be entitled to recover a reasonable attorney's fee from a
13 carrier or employer:

14 (a) Against whom she or he successfully asserts a
15 claim for medical benefits only, if the claimant has not filed
16 or is not entitled to file at such time a claim for
17 disability, permanent impairment, wage-loss, or death
18 benefits, arising out of the same accident; or

19 (b) In any case in which the employer or carrier files
20 a response to petition ~~notice of denial~~ with the division and
21 the injured person has employed an attorney in the successful
22 prosecution of the claim; or

23 (c) In a proceeding in which a carrier or employer
24 denies that an injury occurred for which compensation benefits
25 are payable, and the claimant prevails on the issue of
26 compensability; or

27 (d) In cases where the claimant successfully prevails
28 in proceedings filed under s. 440.24 or s. 440.28.

29
30 In applying the factors set forth in subsection (1) to cases
31 arising under paragraphs (a), (b), (c), and (d), the judge of

1 compensation claims must only consider only such benefits and
2 the time reasonably spent in obtaining them as were secured
3 for the claimant within the scope of paragraphs (a), (b), (c),
4 and (d).

5 Section 15. Effective upon this act becoming a law,
6 paragraph (b) of subsection (9) of section 440.49, Florida
7 Statutes, 1998 Supplement, is amended to read:

8 440.49 Limitation of liability for subsequent injury
9 through Special Disability Trust Fund.--

10 (9) SPECIAL DISABILITY TRUST FUND.--

11 (b)1. The Special Disability Trust Fund shall be
12 maintained by annual assessments upon the insurance companies
13 writing compensation insurance in the state, the commercial
14 self-insurers under ss. 624.462 and 624.4621, the assessable
15 mutuels under s. 628.601, and the self-insurers under this
16 chapter, which assessments shall become due and be paid
17 quarterly at the same time and in addition to the assessments
18 provided in s. 440.51. The division shall estimate annually in
19 advance the amount necessary for the administration of this
20 subsection and the maintenance of this fund and shall make
21 such assessment in the manner hereinafter provided.

22 2. The annual assessment shall be calculated to
23 produce during the ensuing fiscal year an amount which, when
24 combined with that part of the balance in the fund on June 30
25 of the current fiscal year which is in excess of \$100,000, is
26 equal to the average of:

27 a. The sum of disbursements from the fund during the
28 immediate past 3 calendar years, and

29 b. Two times the disbursements of the most recent
30 calendar year.

31

1 Such amount shall be prorated among the insurance companies
2 writing compensation insurance in the state and the
3 self-insurers.

4 3. The net premiums written by the companies for
5 workers' compensation in this state and the net premium
6 written applicable to the self-insurers in this state are the
7 basis for computing the amount to be assessed as a percentage
8 of net premiums. Such payments shall be made by each insurance
9 company and self-insurer to the division for the Special
10 Disability Trust Fund in accordance with such regulations as
11 the division prescribes. For purposes of this subsection, "net
12 premiums written" means direct gross premiums written in this
13 state on insurance policies to which this chapter applies,
14 less return premiums thereon and dividends paid or credited to
15 policyholders on such direct business. "Net premiums written"
16 does not include premiums on contracts between insurers and
17 reinsurers. When reporting "net premiums written" for
18 purposes of computing the assessment, full policy premium
19 value must be reported prior to application of deductible
20 discounts.

21 4. The Treasurer is authorized to receive and credit
22 to such Special Disability Trust Fund any sum or sums that may
23 at any time be contributed to the state by the United States
24 under any Act of Congress, or otherwise, to which the state
25 may be or become entitled by reason of any payments made out
26 of such fund.

27 Section 16. Effective upon this act becoming a law,
28 paragraph (b) of subsection (1) of section 440.51, Florida
29 Statutes, is amended to read:

30 440.51 Expenses of administration.--

31

1 (1) The division shall estimate annually in advance
2 the amounts necessary for the administration of this chapter,
3 in the following manner.

4 (b) The total expenses of administration shall be
5 prorated among the insurance companies writing compensation
6 insurance in the state and self-insurers. The net premiums
7 collected by the companies and the amount of premiums a
8 self-insurer would have to pay if insured are the basis for
9 computing the amount to be assessed. This amount may be
10 assessed as a specific amount or as a percentage of net
11 premiums payable as the division may direct, provided such
12 amount so assessed shall not exceed 4 percent of such net
13 premiums. The insurance companies may elect to make the
14 payments required under s. 440.15(1)(e) rather than having
15 these payments made by the division. In that event, such
16 payments will be credited to the insurance companies, and the
17 amount due by the insurance company under this section will be
18 reduced accordingly. For purposes of this subsection, "net
19 premiums collected" means direct gross premiums written in
20 this state on insurance policies to which this chapter
21 applies, less return premiums thereon and dividends paid or
22 credited to policyholders on such direct business. "Net
23 premiums collected" does not include premiums on contracts
24 between insurers and reinsurers. When reporting "net premiums
25 collected" for purposes of computing the assessment, full
26 policy premium value must be reported prior to application of
27 deductible discounts.

28 Section 17. Paragraphs (g) and (p) of subsection (4)
29 of section 627.311, Florida Statutes, 1998 Supplement, is
30 amended to read:

31 627.311 Joint underwriters and joint reinsurers.--

1 (4)

2 (g) Whenever a deficit exists, the plan shall, within
3 90 days, provide the department with a program to eliminate
4 the deficit within a reasonable time. The deficit may be
5 funded both through increased premiums charged to insureds of
6 the plan for subsequent years, through the use of policyholder
7 surplus attributable to any year, and through assessments on
8 insureds in the plan if the plan uses assessable policies.

9 (p) Neither the plan nor any member of the board of
10 governors is liable for monetary damages to any person for any
11 statement, vote, decision, or failure to act, regarding the
12 management or policies of the plan, unless:

13 1. The member breached or failed to perform her or his
14 duties as a member; and

15 2. The member's breach of, or failure to perform,
16 duties constitutes:

17 a. A violation of the criminal law, unless the member
18 had reasonable cause to believe her or his conduct was not
19 unlawful. A judgment or other final adjudication against a
20 member in any criminal proceeding for violation of the
21 criminal law estops that member from contesting the fact that
22 her or his breach, or failure to perform, constitutes a
23 violation of the criminal law; but does not estop the member
24 from establishing that she or he had reasonable cause to
25 believe that her or his conduct was lawful or had no
26 reasonable cause to believe that her or his conduct was
27 unlawful;

28 b. A transaction from which the member derived an
29 improper personal benefit, either directly or indirectly; or

30 c. Recklessness or any act or omission that was
31 committed in bad faith or with malicious purpose or in a

1 manner exhibiting wanton and willful disregard of human
2 rights, safety, or property. For purposes of this
3 sub-subparagraph, the term "recklessness" means the acting, or
4 omission to act, in conscious disregard of a risk:

5 (I) Known, or so obvious that it should have been
6 known, to the member; and

7 (II) Known to the member, or so obvious that it should
8 have been known, to be so great as to make it highly probable
9 that harm would follow from such act or omission.

10 Section 18. Subsection (3) of section 440.45, Florida
11 Statutes, 1998 Supplement, is repealed.

12 Section 19. Except as otherwise provided in this act,
13 this act shall take effect October 1, 1999.

14 *****

15
16 LEGISLATIVE SUMMARY

17 Revises provision of workers' compensation law relating
18 to requirements and procedures for conducting drug tests
19 and reporting and preserving results of drug tests;
20 requiring contractors under state contract to implement
21 drug-free workplaces; electronic payment of compensation
22 payments; requirements for submission of medical reports
23 and bills and authorized access by rehabilitation
24 providers to medical records; provision by individually
25 self-insured employers to provide medical benefits with
26 or without managed care arrangements; permanent total
27 disability supplemental benefits; private entity
28 contracts to collect policy information; requirements and
29 procedures for filing petitions for benefits; payment of
30 compensation by direct deposit; and establishment by the
31 First District Court of Appeals of a specialized division
to hear appeals of orders of judges of compensation
claims. (See bill for details.)