

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB's 1032 and 2228

SPONSOR: Banking and Insurance Committee and Senators Jones and Silver

SUBJECT: Child Support-Workers' Compensation Settlements

DATE: April 17, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 Amendment</u>
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bills 1032 and 2228 authorizes that Judges of Compensation Claims (JCCs), when reviewing a workers' compensation lump-sum payment settlement, shall consider the interests of the worker and the workers' family when approving the settlement. Such settlement must provide for appropriate recovery of child support arrearages. The bill also clarifies that for the purposes of determining a person's child support obligation, gross income includes "all" workers' compensation benefits and settlements.

This bill amends the following sections of the Florida Statutes: 61.14, 61.30, and 440.20.

II. Present Situation:

Child Support

Present law establishes guidelines a court must follow for ordering child support (s. 61.30, F.S.). The amount of child support paid is based on both parents' gross income, allowable deductions, number of children for whom child support is to be paid, child care costs, health insurance costs, and potentially other circumstances, such as extraordinary medical expenses. Workers' compensation is specifically identified as "gross income" that is to be included in calculating a person's child support obligation (s. 61.30(2)(a)6, F.S.). While the workers' compensation provisions prohibit the assignment of creditors claims against workers' compensation benefits, the law provides that this prohibition does not apply for the purposes of enforcing child or spousal support obligations (s. 61.14(8), F.S.). As a result, workers' compensation benefits can be applied to meet child support or spousal support obligations under current Florida law.

Workers' Compensation

The intent of the Workers' Compensation Law is to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer (s. 440.015, F.S.). Employers are to pay compensation or benefits if the employee suffers an accidental injury or death arising out of the work performed in the course or the scope of employment (s. 440.09, F.S.). Employers must either demonstrate their financial ability to pay workers' compensation, or insure the payment of such compensation (s. 440.38, F.S.).

Section 440.45, F.S., sets forth the Office of Judges of Compensation Claims (JCCs) under the Department of Labor and Employment Security. The Governor appoints the Chief Judge and the full-time judges of compensation claims and their responsibilities primarily center on resolving disputes between injured workers, and carriers and employers as to the benefits perceived to be due and the timely manner in which the benefits are provided.

Workers' compensation benefits usually are paid in the form of bi-weekly checks and payments for medical expenses. However, there are instances when it is in the best interest of all parties to enter into a settlement. Section 440.20(11), F.S., delineates the requirements for allowing a lump-sum payment in exchange for some portion or all of the employer's or carrier's release from liability for future medical expenses, and release from future payments of compensation expenses and other benefits provided under the workers' compensation law.

A lump-sum workers' compensation settlement is permitted under one of the following two circumstances: (a) there is a dispute between the employer or carrier and the employee as to the legal or medical compensability of the claimed injury or alleged accident; or (b) the injured employee has attained maximum medical improvement. For employees who have attained maximum medical improvement, the JCCs may approve the settlement and discharge the entire liability of the employer for compensation and remedial treatment and care, as well as rehabilitation expenses. For those cases of disputed legal or medical compensability, the settlement provides for payment for one component of the workers' compensation benefits in exchange for release from liability for future payments for that component. A Judge of Compensation Claims has the inherent right to examine the settlement as to whether it will aid in rehabilitating the employee and enabling their return to work, and whether the settlement amount is in excess of what the employee would be entitled to receive. If the settlement is not approved by the JCCs, it is considered void.

The number and dollar amount of workers' compensation settlements approved is significant. For FY 1998-99, 31,061 workers' compensation settlements were approved. The total dollar amount of all these settlements was \$978.3 million.

Many of the JCCs have initiated procedures for identifying through the local depository units or the Department of Revenue whether a claimant who is seeking approval of a settlement has a child support order and any arrearage of the child support. If child support arrearage exists, it is considered in the review and approval of the settlement package. A portion of the settlement, under certain conditions, is directed to be paid toward the arrearage, or an agreed upon amount that would satisfy the arrearage. Variations in this procedure have been implemented by most

JCCs across the state and have provided a vehicle for including the workers' compensation settlement in the discussion relative to meeting child support obligations. Dade County reports that \$2 million in child support arrearage has been paid through workers' compensation settlement agreements since October 1997. According to records with the Department of Revenue, there appears to be a substantial level of unpaid child support. Information on arrearages is not available; however, 45.7 percent of the child support due last year was not collected.

Support for assigning workers' compensation settlements to child support arrearage was provided by the Second District Court of Appeals in the case of *Bryant v Bryant*, 621 S.2d 574 (2nd DCA 1993). In that case, the court ruled in favor of a divorced wife who filed a petition requesting that the court order her former husband to pay child support arrearage out of his workers' compensation settlement. The district court of appeal found that the exemption of workers' compensation claims of creditors did not extend to an award of child support. The ruling explained that the court looked to the purpose of the workers' compensation law and determined that it was meant not only to protect the worker, but also the worker's dependents. It also noted that workers' compensation benefits are included as income when a court determines the amount of the child support award.

III. Effect of Proposed Changes:

Section 1. Amends s. 61.14(8), F.S., relating to child support, to provide that when Judges of Compensation Claims (JCCs) review lump-sum workers' compensation payment settlements pursuant to s. 440.20, F.S., they shall consider the interests of the worker and the workers' family when approving the settlement. Such settlement must provide for appropriate recovery of child support arrearages.

Section 2. Amends s. 61.30, F.S., applying to child support income, to clarify that "all workers' compensation benefits and settlements" be considered as gross income in determining child support obligations. While the current language appears to apply to all workers' compensation payments, the bill provides clear statutory authority for considering the full scope of workers' compensation benefits and settlements.

Section 3. Amends s. 440.20, applying to payment of workers' compensation, to provide that when Judges of Compensation Claims (JCCs) review lump-sum workers' compensation payment settlements, they shall consider the interests of the worker and the workers' family when approving the settlement. Such settlement must provide for appropriate recovery of child support arrearages.

Section 4. Provides an effective date of July 1, 2000.

The effect of these provision is to codify the holding by the Second District Court of Appeals in *Bryant v. Bryant*, 621 S.2d 574 (2nd DCA 1993), that the intent of the workers' compensation law is to protect not only the worker, but the worker's dependents and that workers' compensation benefits are included in the definition of gross income for calculation of child support. These provisions also allow JCCs more discretion in providing for child support.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Judges of Compensation Claims will now have the clear legal authority to provide for appropriate recovery of child support arrearage in those cases which are resolved via a lump-sum settlement.

C. Government Sector Impact:

Representatives with the Department of Labor and Employment Security report that this bill will have no fiscal impact on the Division of Workers' Compensation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Workers' Compensation Oversight Board, which is established in s. 440.4416, F.S., to advise the Division of Workers' Compensation and appear before the legislature on issues which impact the workers' compensation system, has formally endorsed the policy being implemented by this bill.

VIII. Amendments:

None.