

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: SB 1032

SPONSOR: Senator Jones

SUBJECT: Child Support

DATE: March 24, 2000

REVISED: 03/28/00 _____

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

I. Summary:

SB 1032 authorizes the judges of compensation claims to consider the interest of the worker, the worker’s family, and the recovery of any child support arrearage in reviewing and approving any settlement of workers’ compensation lump-sum payment. Exemption for child support to the prohibition of creditors claims to any workers’ compensation benefits is specifically provided. The bill also clarifies in the child support guidelines, that the workers’ compensation currently identified as an income to be considered in determining a child support obligation, includes both the workers’ compensation benefits and settlements.

This bill substantially amends sections 61.13(1)(b) and 61.30(2)(a) of the Florida Statutes.

II. Present Situation:

Section 61.30, F.S., establishes the guidelines for ordering child support. 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 an income that is to be included in calculating the child support obligation (s. 61.30(2)(a)6., F.S.). While the workers’ compensation laws include a prohibition to assignment of creditors claims against any workers’ compensation benefits paid pursuant to ch. 440, F.S., (s. 440.22, F.S.), s. 61.14(8), F.S., provides that this prohibition to assignment does not apply for the purposes of enforcing child or spousal support obligations. As a result, workers’ compensation benefits can be applied to meet child support or spousal support obligations under current Florida law.

Chapter 440 of the Florida Statute sets forth the Workers’ Compensation Law. 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 any workers' compensation that may be required to be paid, or insure the payment of the compensation (s. 440.38, F.S.), referred to as a "carrier" (s. 440.02(3), F.S.). Employers incur the following liability for compensation under s. 440.10, F.S.: payment of treatment and care as the injury and process of recovery may require; compensation for disability; and compensation for death.

Section 440.45, F.S., sets forth the Office of Judges of Compensation Claims within the Department of Labor and Employment Security. The Governor appoints the Chief Judge and the full-time judges of compensation claims to conduct proceedings as required by this chapter or other law. The responsibilities of the judges of compensation claims primarily center around 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.

Usually, workers' compensation benefits 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 ch. 440, F.S. A lump-sum workers' compensation settlement is permitted under one of the following two circumstances: 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 the injured employee has attained maximum medical improvement. For injured employees who have attained maximum medical improvement, the judge of compensation claims 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. The 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 as to whether the settlement amount is in excess of what the employee would be entitled to. If the settlement is not approved by the judge of compensation of claims, 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 is \$978.3 million. There also 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.

Many of the judges of compensation claims 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 in most areas of 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.

Support for assigning workers' compensation settlement to child support arrearage was provided in the Bryant v Bryant case decided by the Second District of the District Court of Appeal on July 23, 1993. In this case, the court ruled in favor of a former 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 a claim based on the award of child support. The ruling explained that the courts have 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:

SB 1032 amends s. 61.13(1), F.S., regarding the power of the court to order and modify child support, to provide that the judges of compensation claims consider the interest of the worker, worker's family and recovery of any child-support arrearage in reviewing and approving any settlement of workers' compensation lump-sum payment pursuant to s. 440.20(11)(a) and (b), F.S. Exemption to the prohibition of creditors claims to any workers' compensation benefits is specifically provided in this section.

This bill provides a clear expression of the authority of the judges of compensation claims to consider any child support arrearage owed by a claimant and the recovery of the arrearage in any settlement of workers' compensation lump-sum payment approved. The bill stipulates that child support is exempt from s. 440.22, F.S., which provides that no assignment or recovery of any debt from workers' compensation benefits is permitted. However, s. 61.14(8), F.S., already makes an exception to s. 440.22, F.S., for enforcing child or spousal support obligations and, therefore, provides this exemption.

The bill clarifies in s. 61.30, F.S., on child support guidelines, that the workers' compensation currently identified as an income to be considered in determining child support obligation includes both the workers' compensation benefits and settlement. While the current language appears to intrinsically apply to all workers' compensation payments, the bill provides clear statutory authority for considering this full scope of workers' compensation benefits and settlements.

The bill provides an effective date of July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Claimants owing child support arrearage and reaching a settlement for lump-sum workers' compensation payment will receive a smaller portion of the settlement amount reached. However, the interest of the claimants' families which is a consideration in the workers' compensation system, will receive more attention.

C. Government Sector Impact:

The Department of Labor and Employment Security reports that this bill has no direct effect on the department or Division of Workers' Compensation, and will have an insignificant fiscal impact on the division.

VI. Technical Deficiencies:

The bill places the language authorizing the judges of compensation claims to consider the recovery of child support arrearage in s. 61.13(1)(b), F.S. Subparagraph (b) deals specifically with the health insurance required to be provided for in the child support order. While there is some relationship between health insurance and workers' compensation, a more appropriate placement for this provision is s. 61.14(8), F.S. Section 61.14, F.S., deals with enforcement and modification of child support orders. Paragraph (8) of s. 61.14, F.S., provides an exception for child and spousal support obligation to the prohibition in s. 440.22, F.S. to claims against workers' compensation benefits. Inclusion in this section and paragraph of the statutes would also eliminate the need to specify twice in ch. 61, F.S., that the prohibition of creditors claims on workers' compensation benefits does not apply to claims of child support.

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 and legislation that impacts the workers' compensation system, has formally endorsed the policy being implemented by this bill.

VIII. Amendments:

1 by Children and Families:

Shifts the language authorizing the judges of compensation claims to consider the recovery of child support arrearage from s. 61.13(1)(b), F.S., to s. 61.14(8), F.S. The provision that the prohibition of creditors claims on workers' compensation benefits does not apply to claims of child support is eliminated since s. 61.14(8), F.S., already provides this exception. Language relative to the recovery of the child support arrearage is modified to allow more flexibility in the circumstances under which child support arrearages are recovered. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
