

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 24, 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.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bills 1032 and 2228 authorizes the judges of workers' compensation claims to consider the interest of the worker and the worker's family, inclusive of an outstanding child support arrearage, in any review and approval of a settlement of a workers' compensation claim. The bill provides that workers' compensation benefits are not exempt from claims for child support. The bill also clarifies existing law that includes workers' compensation benefits and workers' compensation settlements as income for purposes of determining a child support obligation under the guidelines

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

II. Present Situation:

Child Support

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 one of a number of categories of income that's to be included in calculating the child support obligation (s. 61.30(2)(a)6., F.S.).

Current law prohibits the assignment of creditors claims against any workers' compensation benefits paid. *See* s. 440.22, F.S. However, this prohibition does not apply to the enforcement of child or spousal support obligations. *See* s. 61.14(8), F.S. Therefore, workers' compensation benefits can be applied to meet child support or spousal support obligations.

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

employment at a reasonable cost to the employer. *See* s. 440.015, F.S. Employers are to pay workers' 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. *See* 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. *See* s. 440.38, F.S. Employers incur the following liability for compensation under s. 440.10, F.S.: 1) Payment of treatment and care as the injury and process of recovery may require; 2) Compensation for disability; and 3) 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: 1) 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 2) 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 examines the settlement to determine whether it will assist in the employee's rehabilitation and return to work, and 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 which could be paid in part from workers' compensation benefits and 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 existing child support orders and arrearages in those cases in which workers' compensation claimants are seeking approval of a settlement. Typically, the judges consider this information in the review and

approval of the settlement package and under certain conditions, a portion of the settlement is directed towards payment or satisfaction of the arrearage. Variations in this procedure have been implemented in most areas of the state. For example, Dade County reports that \$2 million in child support arrearage has been paid through workers' compensation settlement agreements since October 1997. In a 1993 case, the court assigned a portion of the workers' compensation settlement to a child support arrearage based on a former wife's petition to order payment of child support out of the settlement. *See Bryant v. Bryant*, 621 So.2d 574 (Fla. 2nd DCA 1993). The court found that a claim based on a child support order was not exempt from a settlement for workers' compensation, and that this finding was consistent with the stated purpose of the law which is to protect the worker and the worker's dependents and with the law that already includes workers' compensation benefits as part of the income for determining a child support obligation.

III. Effect of Proposed Changes:

The effect of these provisions is to codify the holding in *Bryant v. Bryant*, 621 S.2d 574 (Fla. 2nd DCA 1993) and to carry out one of the expressed intents of the workers' compensation law which is to protect the worker *and* the workers' family, as follows:

Section 1 amends s. 61.14(8), F.S., relating to child support. When reviewing and approving a workers' compensation settlement under section 440.20, F.S., Judges of Compensation Claims (JCCs) must consider the interests of the worker and the workers' family. Moreover, the 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 clearer statutory authority for considering the full scope of workers' compensation benefits and settlements.

Section 3 amends s. 440.20, relating to the payment of workers' compensation, to conform this section with section 1 of the bill by including the same language in the chapter on workers' compensation.

Section 4 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.

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 and only an insignificant fiscal impact on the Division of Workers' Compensation. In addition, 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.

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

VI. Technical Deficiencies:

Paragraph (8) of s. 61.14, F.S., relating to child support, references s. 440.22, F.S., relating to the assignment and exemption of workers' compensation benefits from claims by creditors. Since it has already been stated and held by a court that child and spousal support obligations are not subject to this prohibition, a statement to that effect could also be included in s. 440.22, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.

