

Amendment No. 2 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Melvin, Ross, and Waters offered the
12 following:

14 **Amendment**

15 On page 31, line 17 through page 38, line 9
16 remove from the bill: all of said lines

17
18 and insert in lieu thereof:

19 (11)(a) When a claimant is not represented by counsel,
20 upon joint petition of all interested parties, a lump-sum
21 payment in exchange for the employer's or carrier's release
22 from liability for future medical expenses, as well as future
23 payments of compensation expenses and any other benefits
24 provided under this chapter, shall be allowed at any time in
25 any case in which the employer or carrier has filed a written
26 notice of denial within 120 days after the employer receives
27 notice ~~date~~ of the injury, and the judge of compensation
28 claims at a hearing to consider the settlement proposal finds
29 a justiciable controversy as to legal or medical
30 compensability of the claimed injury or the alleged accident.
31 The employer or carrier may not pay any attorney's fees on

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1 behalf of the claimant for any settlement under this section
2 unless expressly authorized elsewhere in this chapter. Upon
3 the joint petition of all interested parties and after giving
4 due consideration to the interests of all interested parties,
5 the judge of compensation claims may enter a compensation
6 order approving and authorizing the discharge of the liability
7 of the employer for compensation and remedial treatment, care,
8 and attendance, as well as rehabilitation expenses, by the
9 payment of a lump sum. Such a compensation order so entered
10 upon joint petition of all interested parties is not subject
11 to modification or review under s. 440.28. If the settlement
12 proposal together with supporting evidence is not approved by
13 the judge of compensation claims, it shall be considered void.
14 Upon approval of a lump-sum settlement under this subsection,
15 the judge of compensation claims shall send a report to the
16 Chief Judge of the amount of the settlement and a statement of
17 the nature of the controversy. The Chief Judge shall keep a
18 record of all such reports filed by each judge of compensation
19 claims and shall submit to the Legislature a summary of all
20 such reports filed under this subsection annually by September
21 15.

22 (b) When a claimant is not represented by counsel,
23 upon joint petition of all interested parties, a lump-sum
24 payment in exchange for the employer's or carrier's release
25 from liability for future medical expenses, as well as future
26 payments of compensation and rehabilitation expenses, and any
27 other benefits provided under this chapter, may be allowed at
28 any time in any case after the injured employee has attained
29 maximum medical improvement. An employer or carrier may not
30 pay any attorney's fees on behalf of the claimant for any
31 settlement, unless expressly authorized elsewhere in this

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1 chapter. A compensation order so entered upon joint petition
2 of all interested parties shall not be subject to modification
3 or review under s. 440.28. However, a judge of compensation
4 claims is not required to approve any award for lump-sum
5 payment when it is determined by the judge of compensation
6 claims that the payment being made is in excess of the value
7 of benefits the claimant would be entitled to under this
8 chapter. The judge of compensation claims shall make or cause
9 to be made such investigations as she or he considers
10 necessary, in each case in which the parties have stipulated
11 that a proposed final settlement of liability of the employer
12 for compensation shall not be subject to modification or
13 review under s. 440.28, to determine whether such final
14 disposition will definitely aid the rehabilitation of the
15 injured worker or otherwise is clearly for the best interests
16 of the person entitled to compensation and, in her or his
17 discretion, may have an investigation made by the
18 Rehabilitation Section of the Division of Workers'
19 Compensation. The joint petition and the report of any
20 investigation so made will be deemed a part of the proceeding.
21 An employer shall have the right to appear at any hearing
22 pursuant to this subsection which relates to the discharge of
23 such employer's liability and to present testimony at such
24 hearing. The carrier shall provide reasonable notice to the
25 employer of the time and date of any such hearing and inform
26 the employer of her or his rights to appear and testify. ~~When~~
27 ~~the claimant is represented by counsel or when the claimant~~
28 ~~and carrier or employer are represented by counsel, final~~
29 ~~approval of the lump-sum settlement agreement, as provided for~~
30 ~~in a joint petition and stipulation, shall be approved by~~
31 ~~entry of an order within 7 days after the filing of such joint~~

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1 ~~petition and stipulation without a hearing, unless the judge~~
2 ~~of compensation claims determines, in her or his discretion,~~
3 ~~that additional testimony is needed before such settlement can~~
4 ~~be approved or disapproved and so notifies the parties.~~The
5 probability of the death of the injured employee or other
6 person entitled to compensation before the expiration of the
7 period during which such person is entitled to compensation
8 shall, in the absence of special circumstances making such
9 course improper, be determined in accordance with the most
10 recent United States Life Tables published by the National
11 Office of Vital Statistics of the United States Department of
12 Health and Human Services. The probability of the happening of
13 any other contingency affecting the amount or duration of the
14 compensation, except the possibility of the remarriage of a
15 surviving spouse, shall be disregarded. As a condition of
16 approving a lump-sum payment to a surviving spouse, the judge
17 of compensation claims, in the judge of compensation claims'
18 discretion, may require security which will ensure that, in
19 the event of the remarriage of such surviving spouse, any
20 unaccrued future payments so paid may be recovered or recouped
21 by the employer or carrier. Such applications shall be
22 considered and determined in accordance with s. 440.25.

23 (c) Notwithstanding s. 440.21(2), when a claimant is
24 represented by counsel, the claimant may waive all rights to
25 any and all benefits under this chapter by entering into a
26 settlement agreement releasing the employer and the carrier
27 from liability for workers' compensation benefits in exchange
28 for a lump-sum payment to the claimant. The settlement
29 agreement requires approval by the judge of compensation
30 claims only as to the attorney's fees paid to the claimant's
31 attorney by the claimant. The parties need not submit any

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1 information or documentation in support of the settlement,
2 except as needed to justify the amount of the attorney's fees.
3 Neither the employer nor the carrier is responsible for any
4 attorney's fees relating to the settlement and release of
5 claims under this section. Payment of the lump-sum settlement
6 amount must be made within 14 days after the date the judge of
7 compensation claims mails the order approving the attorney's
8 fees. Any order entered by a judge of compensation claims
9 approving the attorney's fees as set out in the settlement
10 under this subsection is not considered to be an award and is
11 not subject to modification or review. The judge of
12 compensation claims shall report these settlements to the
13 Deputy Chief Judge in accordance with the requirements set
14 forth in paragraphs (a) and (b). Settlements entered into
15 under this subsection are valid and apply to all dates of
16 accident.

17 (d) With respect to any lump-sum settlement under this
18 subsection, a judge of compensation claims must consider
19 whether the settlement provides for appropriate recovery of
20 any child support arrearage.

21 (e)(c) This section applies to all claims that the
22 parties have not previously settled, regardless of the date of
23 accident.

24 Section 17. Section 440.22, Florida Statutes, is
25 amended to read:

26 440.22 Assignment and exemption from claims of
27 creditors.--No assignment, release, or commutation of
28 compensation or benefits due or payable under this chapter
29 except as provided by this chapter shall be valid, and such
30 compensation and benefits shall be exempt from all claims of
31 creditors, and from levy, execution and attachments or other

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1 remedy for recovery or collection of a debt, which exemption
2 may not be waived. However, the exemption of workers'
3 compensation claims from creditors does not extend to claims
4 based on an award of child support or alimony.

5 Section 18. Subsections (1), (2), (3), and (4) and
6 paragraph (b) of subsection (5) of section 440.25, Florida
7 Statutes, are amended to read:

8 440.25 Procedures for mediation and hearings.--

9 (1) Within 21 days after a petition for benefits is
10 filed under s. 440.192, a mediation conference concerning such
11 petition shall be held. Within 7 days after such petition is
12 filed, the judge of compensation claims shall notify the
13 interested parties that a mediation conference concerning such
14 petition will be held. Such notice shall give the date, time,
15 and location of the mediation conference. Such notice may be
16 served personally upon the interested parties or may be sent
17 to the interested parties by mail. The claimant or the
18 adjuster of the employer or carrier may, at the mediator's
19 discretion, attend the mediation conference by telephone or,
20 if agreed to by the parties, other electronic means.

21 (2) Any party who participates in a mediation
22 conference shall not be precluded from requesting a hearing
23 following the mediation conference should both parties not
24 agree to be bound by the results of the mediation conference.
25 A mediation conference is required to be held unless this
26 requirement is waived by the Deputy Chief Judge. No later than
27 3 days prior to the mediation conference, all parties must
28 submit any applicable motions, including, but not limited to,
29 a motion to waive the mediation conference, to the judge of
30 compensation claims.

31 (3) Such mediation conference shall be conducted

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1 informally and does not require the use of formal rules of
2 evidence or procedure. Any information from the files,
3 reports, case summaries, mediator's notes, or other
4 communications or materials, oral or written, relating to a
5 mediation conference under this section obtained by any person
6 performing mediation duties is privileged and confidential and
7 may not be disclosed without the written consent of all
8 parties to the conference. Any research or evaluation effort
9 directed at assessing the mediation program activities or
10 performance must protect the confidentiality of such
11 information. Each party to a mediation conference has a
12 privilege during and after the conference to refuse to
13 disclose and to prevent another from disclosing communications
14 made during the conference whether or not the contested issues
15 are successfully resolved. This subsection and paragraphs
16 (4)(a) and (b) shall not be construed to prevent or inhibit
17 the discovery or admissibility of any information that is
18 otherwise subject to discovery or that is admissible under
19 applicable law or rule of procedure, except that any conduct
20 or statements made during a mediation conference or in
21 negotiations concerning the conference are inadmissible in any
22 proceeding under this chapter. The Deputy Chief Judge shall
23 select a mediator. The mediator shall be employed on a
24 full-time basis by the Office of the Judges of Compensation
25 Claims. A mediator must be a member of The Florida Bar for at
26 least 5 years and must complete a mediation training program
27 approved by the Deputy Chief Judge. Adjunct mediators may be
28 employed by the Office of the Judges of Compensation Claims on
29 an as-needed basis and shall be selected from a list prepared
30 by the Deputy Chief Judge. An adjunct mediator must be
31 independent of all parties participating in the mediation

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1 conference. An adjunct mediator must be a member of The
2 Florida Bar for at least 5 years and must complete a mediation
3 training program approved by the Deputy Chief Judge. An
4 adjunct
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