

By Senator Campbell

33-1194-01

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.15, F.S.; substantially
4 revising provisions governing compensation for
5 disability; providing guidelines relating to
6 permanent total disability, to temporary total
7 disability, to permanent partial disability, to
8 temporary partial disability, and to subsequent
9 injury; providing consequences if an employee
10 refuses or leaves employment; amending s.
11 440.34, F.S.; substantially revising provisions
12 relating to attorney's fees and costs;
13 providing that reasonable attorney's fees must
14 be awarded to a claimant, as specified;
15 providing penalties for violations; providing
16 an effective date.

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

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20 Section 1. Section 440.15, Florida Statutes, is
21 amended to read:
22 (Substantial rewording of section. See
23 s. 440.15, F.S., for present text.)
24 440.15 Compensation for disability.--Compensation for
25 disability shall be paid to the employee, subject to the
26 limits provided in s. 440.12(2), as follows:
27 (1) PERMANENT TOTAL DISABILITY.--
28 (a) In case of total disability adjudged to be
29 permanent, 60 percent of the average weekly wages shall be
30 paid to the employee during the continuance of such total
31 disability.

1 (b) Loss of both hands, of both arms, of both feet, of
2 both legs, of both eyes, or of any two thereof, in the absence
3 of conclusive proof to the contrary, constitutes permanent
4 total disability. In all other cases, permanent total
5 disability must be determined in accordance with the facts.

6 (c) If an employee who is being paid compensation for
7 permanent total disability becomes rehabilitated to the extent
8 that she or he establishes an earning capacity, the employee
9 must be paid during the period of such employment, instead of
10 the compensation provided in paragraph (a), compensation in
11 the amount of 60 percent of the difference between his or her
12 average weekly wages at the time the total disability was
13 incurred and his or her wage-earning capacity as determined by
14 his or her actual earnings in such employment.

15 (d)1. In case of permanent total disability resulting
16 from injuries that occurred subsequent to June 30, 1955, and
17 for which the liability of the employer for compensation has
18 not been discharged under s. 440.20, the injured employee
19 shall receive from the division additional weekly compensation
20 benefits equal to 5 percent of the injured employee's weekly
21 compensation rate as established pursuant to the law in effect
22 on the date of his or her injury, multiplied by the number of
23 calendar years since the date of injury, and subject to the
24 maximum weekly compensation rate set forth in s. 440.12(2).
25 Such additional benefits shall be paid out of the Workers'
26 Compensation Administration Trust Fund. This subparagraph
27 applies to payments due after October 1, 1974.

28 2. The division shall provide by rule for the periodic
29 reporting to the division of all earnings of any nature and
30 social security income by the injured employee entitled to or
31 claiming additional compensation under subparagraph 1. Neither

1 the division nor the employer or carrier shall make any
2 payment of those additional benefits provided by subparagraph
3 1. for any period during which the employee willfully fails or
4 refuses to report as required by the division in the manner
5 prescribed by such rules.

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7 The division shall provide by rule for the periodic reporting
8 to the employer or carrier of all earnings of any nature or
9 social security income by the injured employee entitled to or
10 claiming benefits for permanent total disability for any
11 period during which the employee willfully fails or refuses to
12 report upon request by the employer or carrier in the manner
13 prescribed by such rules.

14 (2) TEMPORARY TOTAL DISABILITY.--

15 (a) In case of disability total in character but
16 temporary in quality, 60 percent of the average weekly wages
17 shall be paid to the employee during the continuance thereof,
18 not to exceed 350 weeks except as provided in s. 440.12(1).

19 (b) Temporary total disability, for which compensation
20 shall be paid pursuant to paragraph (a), shall include such
21 periods as are reasonably required for training in the use of
22 artificial members and appliances, and shall include such
23 period as the employee may be receiving training or education
24 under a rehabilitation program pursuant to s. 440.49(1), s.
25 440.49(2), or s. 440.49(3), not to exceed 40 weeks.

26 (c) Notwithstanding paragraph (a), an employee who has
27 sustained the loss of an arm, leg, hand, or foot, or the total
28 loss of use of such member, because of organic damage to the
29 nervous system, or has lost the sight of both eyes as provided
30 in paragraph (3)(p), shall be paid temporary total disability
31 of 80 percent of his or her average weekly wage, until the

1 employee has completed her or his training in the use of
2 artificial members or appliances as necessary and completed
3 training or education under a rehabilitative program pursuant
4 to s. 440.49(1), s. 440.49(2), or s. 440.49(3), if provided.
5 The increased temporary total disability compensation provided
6 for in this paragraph must not extend beyond 6 months after
7 the date of the injury. The compensation provided by this
8 paragraph is not subject to the limits provided in s.
9 440.12(2), but instead is subject to a maximum weekly
10 compensation rate of \$400. If, at the conclusion of this
11 period of increased temporary total disability compensation,
12 the employee is still temporarily totally disabled, the
13 employee shall continue to receive temporary total disability
14 compensation as set forth in paragraphs (a) and (b). The
15 period of time the employee has received this increased
16 compensation will be counted as part of, and not in addition
17 to, the maximum periods of time for which the employee is
18 entitled to compensation under paragraph (a) but not paragraph
19 (b).

20 (3) PERMANENT PARTIAL DISABILITY.--In case of
21 disability partial in character but permanent in quality, the
22 compensation shall, in addition to that provided by subsection
23 (2), be 60 percent of the average weekly wages, and shall be
24 paid to the employee as follows:

- 25 (a) Arm lost, 200 weeks' compensation.
- 26 (b) Leg lost, 200 weeks' compensation.
- 27 (c) Hand lost, 175 weeks' compensation.
- 28 (d) Foot lost, 175 weeks' compensation.
- 29 (e) Eye lost, 175 weeks' compensation.
- 30 (f) Thumb lost, 60 weeks' compensation.
- 31 (g) First finger lost, 35 weeks' compensation.

- 1 (h) Great toe lost, 30 weeks' compensation.
2 (i) Second finger lost, 30 weeks' compensation.
3 (j) Third finger lost, 20 weeks' compensation.
4 (k) Toe other than great toe lost, 10 weeks'
5 compensation.
6 (l) Fourth finger lost, 15 weeks' compensation.
7 (m) Loss of hearing: Compensation for loss of hearing
8 in one ear, 40 weeks. Compensation for loss of hearing in both
9 ears, 150 weeks.
10 (n) Phalanges: Compensation for loss of more than one
11 phalange of a digit shall be the same as for loss of the
12 entire digit. Compensation for loss of the first phalange
13 shall be one-half of the compensation for the loss of the
14 entire digit.
15 (o) Amputated arm or leg: Compensation for an arm or
16 leg, if amputated at or above the elbow or the knee, shall be
17 the same as for the loss of the arm or leg, but, if amputated
18 between the elbow and the wrist, or the knee and the ankle,
19 shall be the same as for the loss of a hand or foot.
20 (p) Percent of vision: Compensation for loss of 80
21 percent or more of the vision of an eye shall be the same as
22 for the loss of the eye.
23 (q) Two or more digits: Compensation for loss of two
24 or more digits or one or more phalanges of two or more digits,
25 or a hand or foot may be proportioned to the loss of use of
26 the hand or foot occasioned thereby, but shall not exceed the
27 compensation for loss of a hand or foot.
28 (r) Total loss of use: Compensation for permanent
29 total loss of use of a member shall be the same as for loss of
30 the member.
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1 (s) Partial loss or partial loss of use: Compensation
2 for permanent partial loss or loss of use of a member may be
3 for proportionate loss or loss of use of the member.

4 (t) Disfigurement: The judge of compensation claims
5 shall award proper and equitable compensation for serious
6 facial or head disfigurement, not to exceed \$2,000; however,
7 in granting such an award, the judge of compensation claims
8 shall consider only the effect the disfigurement will have on
9 the future earning capacity of the injured employee.

10 (u) Other cases: In all other cases in this class of
11 disability the compensation shall be:

12 1. Sixty percent of the injured employee's average
13 weekly wage for such number of weeks as the injured employee's
14 percentage of disability is of 175 weeks when the injured
15 employee's percentage of disability is 10 percent or less.

16 2. Sixty percent of the injured employee's average
17 weekly wage for such number of weeks as the injured employee's
18 percentage of disability is of 350 weeks when the injured
19 employee's percentage of disability is more than 10 percent
20 but less than and including 50 percent.

21 3. Sixty percent of the injured employee's average
22 weekly wage for such number of weeks as the injured employee's
23 percentage of disability is of 525 weeks when the injured
24 employee's percentage of disability is more than 50 percent
25 but less than and including 99 percent.

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27 However, as used in this paragraph, the term "disability"
28 means either physical impairment or diminution of wage-earning
29 capacity, whichever is greater.

30 (4) TEMPORARY PARTIAL DISABILITY.--In case of
31 temporary partial disability resulting in decrease of earning

1 capacity, the compensation shall be 60 percent of the
2 difference between the injured employee's average weekly wages
3 before the injury and his or her wage-earning capacity after
4 the injury in the same or other employment, to be paid during
5 the continuance of the disability, but not to be paid for a
6 period exceeding 5 years.

7 (5) SUBSEQUENT INJURY.--

8 (a) If any employee receives any injury for which
9 compensation is payable while she or he is still receiving or
10 is entitled to receive compensation for a previous injury in
11 the employ of the same employer, he or she shall not at the
12 same time be entitled to compensation for both injuries,
13 unless the latter injury be a permanent injury such as those
14 specified in this section; but he or she shall be entitled to
15 compensation for that injury and from the time of that injury
16 which will cover the longest period and the longest amount
17 payable under this chapter.

18 (b) If any employee receives permanent injury as
19 specified in this section, after having previously sustained
20 another permanent injury in the employ of the same employer,
21 he or she shall be entitled to compensation for both injuries,
22 but the total compensation shall be paid by extending the
23 period and not by increasing the amount of weekly
24 compensation. When the previous and subsequent injuries
25 received in the same employment result in permanent total
26 disability, compensation shall be payable for permanent total
27 disability.

28 (c) The fact that an employee has suffered previous
29 disability, impairment, or disease or has received
30 compensation therefor shall not preclude him or her from
31 receiving benefits for a later injury nor preclude receiving

1 benefits for death resulting therefrom; but in determining
2 compensation for the later injury or death, the employee's
3 average weekly wages shall be the sum that represents his or
4 her earning capacity at the time of the later injury. However,
5 if an employee who has received compensation under this
6 chapter for a previous permanent partial disability,
7 impairment, or disease incurs a subsequent permanent partial
8 disability from injury or occupational disease arising out of
9 and in the course of his or her employment which merges with
10 the preexisting permanent partial disability, impairment, or
11 disease to cause a permanent partial disability that is
12 greater than that which would have resulted from the
13 subsequent injury or occupational disease alone, the
14 compensation received for the previous permanent partial
15 disability, impairment, or disease shall be deducted from the
16 compensation payable for the subsequent permanent partial
17 disability. However, the compensation for the subsequent
18 permanent partial disability must not be less than that
19 allowed from the subsequent injury or occupational disease if
20 the previous disability had not existed.

21 (6) HERNIA.--In all claims for compensation for hernia
22 resulting from injury by accident arising out of and in the
23 course of employment, it must be proved to the satisfaction of
24 the division:

- 25 (a) That there was an injury resulting in hernia.
26 (b) That the hernia appeared suddenly.
27 (c) That it was accompanied by pain.
28 (d) That the hernia immediately followed an accident.
29 (e) That the hernia did not exist before the accident
30 for which compensation is claimed.

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1 (f) All hernia, inguinal, femoral, or otherwise, so
2 proved to be the result of an injury by accident arising out
3 of and in the course of the employment, shall be treated at
4 the expense of the employer in a surgical manner by radical
5 operation. Compensation shall be paid for a period of 6 weeks
6 after the date of the operation. If the injured employee
7 refuses to undergo the radical operation for the cure of the
8 hernia, no compensation will be allowed during the time of
9 refusal unless the employee by religious belief does not use
10 medical or surgical treatment. If, however, it is shown that
11 the employee had some chronic disease, or is otherwise in such
12 physical condition that the judge of compensation claims
13 considers it unsafe for the employee to undergo the operation,
14 the compensation shall be paid as otherwise provided in
15 subsection (4), but not for more than 30 weeks. Compensation
16 shall be allowed for temporary total disability as provided by
17 subsection (2) for such disability before the operation.

18 (7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
19 employee refuses employment suitable to his or her capacity,
20 offered to or procured therefor, the employee shall not be
21 entitled to any compensation at any time during the
22 continuance of such refusal unless in the opinion of the judge
23 of compensation claims such refusal is justifiable.

24 (8) EMPLOYEE LEAVES EMPLOYMENT.--If an injured
25 employee, when receiving compensation for temporary partial
26 disability, leaves the employment of the employer by whom he
27 or she was employed at the time of the accident for which the
28 compensation is being paid, she or he shall, upon securing
29 employment elsewhere, give to his or her former employer an
30 affidavit in writing containing the name of his or her new
31 employer, the place of employment, and the amount of wages

1 being received at the new place of employment, and, until he
2 or she gives such an affidavit, the compensation for temporary
3 partial disability will cease. The employer by whom the
4 employee was employed at the time of the accident for which
5 such compensation is being paid may also at any time demand of
6 the employee an additional affidavit in writing containing the
7 name of his or her employer, the place of his or her
8 employment, and the amount of wages he or she is receiving,
9 and if the employee, upon such demand, fails or refuses to
10 make and furnish such an affidavit, his or her right to
11 compensation for temporary partial disability shall cease
12 until the affidavit is made and furnished.

13 Section 2. Section 440.34, Florida Statutes, is
14 amended to read:

15 (Substantial rewording of section. See
16 s. 440.34, F.S., for present text.)

17 440.34 Attorney's fees; costs; penalty for
18 violations.--

19 (1) If the employer or carrier files a response to
20 petition as provided in s. 440.192, and has declined to pay a
21 claim on or before the 30th day after the date of the petition
22 being filed, and the claimant has employed an attorney in the
23 successful prosecution of the claim, there shall, in addition
24 to the award for compensation, be awarded a reasonable
25 attorney's fee of 25 percent of the first \$5,000 of the amount
26 of the benefits secured, 20 percent of the next \$5,000 of the
27 amount of the benefits secured, and 15 percent of the
28 remaining amount of benefits secured, to be approved by the
29 judge of compensation claims, which fee may be paid directly
30 to the attorney for the claimant in a lump sum. However, such
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1 terms do not include future medical benefits to be provided on
2 any date more than 5 years after the date the claim is filed.

3 (2) In awarding a reasonable attorney's fee, the judge
4 of compensation claims shall consider only that portion of the
5 award to the claimant that the attorney is responsible for
6 securing.

7 (3) If any proceedings are had for review of any
8 compensation order before the First District Court of Appeal,
9 the court may, in its discretion, allow attorney's fees, which
10 shall be in addition to the compensation paid the claimant and
11 shall be paid as the court directs.

12 (4) There shall be further assessed against the
13 employer or carrier, as costs in such claims, such fees and
14 mileage for witnesses attending the hearing at the instance of
15 the claimant as would be allowed such witnesses in cases at
16 law.

17 (5) Any person:

18 (a) Who receives any fees or other consideration or
19 any gratuity on account or services so rendered, unless the
20 consideration or gratuity is approved by the judge of
21 compensation claims or the First District Court of Appeal; or

22 (b) Who makes it a business to solicit employment for
23 a lawyer or for himself or herself in respect of any petition
24 or award for compensation,

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26 commits a misdemeanor of the second degree, punishable as
27 provided in s. 775.082 or s. 775.083.

28 Section 3. This act shall take effect July 1, 2001.
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SENATE SUMMARY

Substantially revises provisions governing workers' compensation, including those relating to amounts and to conditions for granting compensation. Provides guidelines relating to permanent total disability, to temporary total disability, to permanent partial disability, to temporary partial disability, and to subsequent injury. Provides consequences if an employee refuses or leaves employment. Substantially revises provisions relating to attorney's fees and costs. Provides for the award of reasonable attorney's fees and costs to a claimant in worker's-compensation cases, as specified. Provides penalties for violations.