

Bill No. CS for CS for SB 1132

Amendment No. \_\_\_\_ Barcode 161846

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	05/01/2003	.	
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	06:03 PM	.	
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11	Senator Smith moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 206, line 27, through		
15	page 211, line 29, delete those lines		
16			
17	and insert:		
18	(5)(a) Procedures with respect to appeals from orders		
19	of judges of compensation claims shall be governed by rules		
20	adopted by the Supreme Court. Such an order shall become final		
21	30 days after mailing of copies of such order to the parties,		
22	unless appealed pursuant to such rules.		
23	(b) An appellant may be relieved of any necessary		
24	filing fee by filing a verified petition of indigency for		
25	approval as provided in s. 57.081(1) and may be relieved in		
26	whole or in part from the costs for preparation of the record		
27	on appeal if, within 15 days after the date notice of the		
28	estimated costs for the preparation is served, the appellant		
29	files with the judge of compensation claims a copy of the		
30	designation of the record on appeal, and a verified petition		
31	to be relieved of costs. A verified petition filed prior to		

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1 the date of service of the notice of the estimated costs shall  
2 be deemed not timely filed. The verified petition relating to  
3 record costs shall contain a sworn statement that the  
4 appellant is insolvent and a complete, detailed, and sworn  
5 financial affidavit showing all the appellant's assets,  
6 liabilities, and income. Failure to state in the affidavit all  
7 assets and income, including marital assets and income, shall  
8 be grounds for denying the petition with prejudice. The Office  
9 of the Judges of Compensation Claims shall adopt rules as may  
10 be required pursuant to this subsection, including forms for  
11 use in all petitions brought under this subsection. The  
12 appellant's attorney, or the appellant if she or he is not  
13 represented by an attorney, shall include as a part of the  
14 verified petition relating to record costs an affidavit or  
15 affirmation that, in her or his opinion, the notice of appeal  
16 was filed in good faith and that there is a probable basis for  
17 the District Court of Appeal, First District, to find  
18 reversible error, and shall state with particularity the  
19 specific legal and factual grounds for the opinion. Failure to  
20 so affirm shall be grounds for denying the petition. A copy of  
21 the verified petition relating to record costs shall be served  
22 upon all interested parties. The judge of compensation claims  
23 shall promptly conduct a hearing on the verified petition  
24 relating to record costs, giving at least 15 days' notice to  
25 the appellant, the department, and all other interested  
26 parties, all of whom shall be parties to the proceedings. The  
27 judge of compensation claims may enter an order without such  
28 hearing if no objection is filed by an interested party within  
29 20 days from the service date of the verified petition  
30 relating to record costs. Such proceedings shall be conducted  
31 in accordance with the provisions of this section and with the

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1 workers' compensation rules of procedure, to the extent  
2 applicable. In the event an insolvency petition is granted,  
3 the judge of compensation claims shall direct the department  
4 to pay record costs and filing fees from the Workers'  
5 Compensation Administration Trust Fund pending final  
6 disposition of the costs of appeal. The department may  
7 transcribe or arrange for the transcription of the record in  
8 any proceeding for which it is ordered to pay the cost of the  
9 record.

10 (c) As a condition of filing a notice of appeal to the  
11 District Court of Appeal, First District, an employer who has  
12 not secured the payment of compensation under this chapter in  
13 compliance with s. 440.38 shall file with the notice of appeal  
14 a good and sufficient bond, as provided in s. 59.13,  
15 conditioned to pay the amount of the demand and any interest  
16 and costs payable under the terms of the order if the appeal  
17 is dismissed, or if the District Court of Appeal, First  
18 District, affirms the award in any amount. Upon the failure of  
19 such employer to file such bond with the judge of compensation  
20 claims or the District Court of Appeal, First District, along  
21 with the notice of appeal, the District Court of Appeal, First  
22 District, shall dismiss the notice of appeal.

23 (6) An award of compensation for disability may be  
24 made after the death of an injured employee.

25 ~~(7) An injured employee claiming or entitled to~~  
26 ~~compensation shall submit to such physical examination by a~~  
27 ~~certified expert medical advisor approved by the agency or the~~  
28 ~~judge of compensation claims as the agency or the judge of~~  
29 ~~compensation claims may require. The place or places shall be~~  
30 ~~reasonably convenient for the employee. Such physician or~~  
31 ~~physicians as the employee, employer, or carrier may select~~

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1 ~~and pay for may participate in an examination if the employee,~~  
2 ~~employer, or carrier so requests. Proceedings shall be~~  
3 ~~suspended and no compensation shall be payable for any period~~  
4 ~~during which the employee may refuse to submit to examination.~~  
5 Any interested party shall have the right in any case of death  
6 to require an autopsy, the cost thereof to be borne by the  
7 party requesting it; and the judge of compensation claims  
8 shall have authority to order and require an autopsy and may,  
9 in her or his discretion, withhold her or his findings and  
10 award until an autopsy is held.

11 Section 34. Section 440.271, Florida Statutes, is  
12 amended to read:

13 440.271 Appeal of order of judge of compensation  
14 claims.--Review of any order of a judge of compensation claims  
15 entered pursuant to this chapter shall be by appeal to the  
16 District Court of Appeal, First District. Appeals shall be  
17 filed in accordance with rules of procedure prescribed by the  
18 Supreme Court for review of such orders. The department shall  
19 be given notice of any proceedings when the cost of the record  
20 on appeal is paid by the Workers' Compensation Administrative  
21 Trust Fund, or when the matter involves pertaining to s.  
22 ~~440.25, regarding indigency, or s. 440.49, regarding the~~  
23 Special Disability Trust Fund, and shall have the right to  
24 intervene in any proceedings.

25 Section 35. Section 440.28, Florida Statutes, is  
26 amended to read:

27 440.28 Modification of orders.--Upon a judge of  
28 compensation claims' own initiative, or upon the application  
29 of any party in interest, on the ground of a change in  
30 condition or because of a mistake in a determination of fact,  
31 the judge of compensation claims may, at any time prior to 2

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1 years after the date of the last payment of compensation  
2 pursuant to the compensation order the party seeks to modify,  
3 or at any time prior to 2 years after the date copies of an  
4 order rejecting a claim are mailed to the parties at the last  
5 known address of each, review a compensation case in  
6 accordance with the procedure prescribed in respect of claims  
7 in s. 440.25 and, in accordance with such section, issue a new  
8 compensation order which may terminate, continue, reinstate,  
9 increase, or decrease such compensation or award compensation.  
10 Such new order shall not affect any compensation previously  
11 paid, except that an award increasing the compensation rate  
12 may be made effective from the date of the injury, and, if any  
13 part of the compensation due or to become due is unpaid, an  
14 award decreasing the compensation rate may be made effective  
15 from the date of the injury, and any payment made prior  
16 thereto in excess of such decreased rate shall be deducted  
17 from any unpaid compensation, in such manner and by such  
18 method as may be determined by the judge of compensation  
19 claims. Peer review panels have the same jurisdiction to  
20 review and modify initial or final adjudications that they  
21 have rendered on the same basis and within the same parameters  
22 as set forth in this section for judges.

23  
24 (Redesignate subsequent sections.)

25  
26

27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 On page 5, lines 1-19, delete those lines

30

31 and insert:

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1           revising the hearing process; eliminating  
2           expert medical advisor physical examinations;  
3           amending s. 440.271, F.S.; revising provisions  
4           relating to appeals of orders issued by judges  
5           of compensation claims; amending s. 440.28,  
6           F.S.; allowing peer review panels to modify  
7           their orders in certain circumstances;

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