

Bill No. CS for CS for SB 1132

Amendment No. ____ Barcode 530484

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Smith moved the following amendment:

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13 **Senate Amendment**

14 On page 198, line 1, through

15 page 206, line 26, delete those lines

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17 and insert:

18 (1) Within 90 days after a petition for indemnity
19 benefits is filed under s. 440.192, a mediation conference
20 concerning such petition shall be held. It is permissible,
21 but not mandatory, to mediate any additional issues at such
22 mediation. Within 40 days after such petition is filed, the
23 judge of compensation claims shall notify the interested
24 parties by order that a mediation conference concerning such
25 petition will be held unless the parties have notified the
26 Office of the Judges of Compensation Claims that a mediation
27 has been held. Such order must give the date by which the
28 mediation conference must be held. Such order may be served
29 personally upon the interested parties or may be sent to the
30 interested parties by mail. The claimant or the adjuster of
31 the employer or carrier may, at the mediator's discretion,

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1 attend the mediation conference by telephone or, if agreed to
2 by the parties, other electronic means. A continuance may be
3 granted if the requesting party demonstrates to the judge of
4 compensation claims that the reason for requesting the
5 continuance arises from circumstances beyond the party's
6 control. Any order granting a continuance must set forth the
7 date of the rescheduled mediation conference. A mediation
8 conference may not be used solely for the purpose of mediating
9 attorney's fees.

10 (2) Any party who participates in a mediation
11 conference shall not be precluded from requesting a hearing
12 following the mediation conference should both parties not
13 agree to be bound by the results of the mediation conference.
14 A mediation conference is required to be held unless this
15 requirement is waived by the Deputy Chief Judge. No later than
16 3 days prior to the mediation conference, all parties must
17 submit any applicable motions, including, but not limited to,
18 a motion to waive the mediation conference, to the judge of
19 compensation claims.

20 (3)(a) Such mediation conference shall be conducted
21 informally and does not require the use of formal rules of
22 evidence or procedure. Any information from the files,
23 reports, case summaries, mediator's notes, or other
24 communications or materials, oral or written, relating to a
25 mediation conference under this section obtained by any person
26 performing mediation duties is privileged and confidential and
27 may not be disclosed without the written consent of all
28 parties to the conference. Any research or evaluation effort
29 directed at assessing the mediation program activities or
30 performance must protect the confidentiality of such
31 information. Each party to a mediation conference has a

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1 privilege during and after the conference to refuse to
2 disclose and to prevent another from disclosing communications
3 made during the conference whether or not the contested issues
4 are successfully resolved. This subsection and paragraphs
5 (4)(a) and (b) shall not be construed to prevent or inhibit
6 the discovery or admissibility of any information that is
7 otherwise subject to discovery or that is admissible under
8 applicable law or rule of procedure, except that any conduct
9 or statements made during a mediation conference or in
10 negotiations concerning the conference are inadmissible in any
11 proceeding under this chapter.

12 1. Unless the parties conduct a private mediation
13 under subparagraph 2., mediation shall be conducted by a
14 mediator selected by the Director of the Division of
15 Administrative Hearings from among mediators employed on a
16 full-time basis by the Office of the Judges of Compensation
17 Claims. A mediator must be a member of The Florida Bar for at
18 least 5 years and must complete a mediation training program
19 approved by the Director of the Division of Administrative
20 Hearings. Adjunct mediators may be employed by the Office of
21 the Judges of Compensation Claims on an as-needed basis and
22 shall be selected from a list prepared by the Director of the
23 Division of Administrative Hearings. An adjunct mediator must
24 be independent of all parties participating in the mediation
25 conference. An adjunct mediator must be a member of The
26 Florida Bar for at least 5 years and must complete a mediation
27 training program approved by the Director of the Division of
28 Administrative Hearings. An adjunct mediator shall have access
29 to the office, equipment, and supplies of the judge of
30 compensation claims in each district.

31 2. With respect to any mediation occurring on or after

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1 January 1, 2003, if the parties agree or if mediators are not
2 available under subparagraph 1. to conduct the required
3 mediation within the period specified in this section, the
4 parties shall hold a mediation conference at the carrier's
5 expense within the 90-day period set for mediation. The
6 mediation conference shall be conducted by a mediator
7 certified under s. 44.106. If the parties do not agree upon a
8 mediator within 10 days after the date of the order, the
9 claimant shall notify the judge in writing and the judge shall
10 appoint a mediator under this subparagraph within 7 days. In
11 the event both parties agree, the results of the mediation
12 conference shall be binding and neither party shall have a
13 right to appeal the results. In the event either party refuses
14 to agree to the results of the mediation conference, the
15 results of the mediation conference as well as the testimony,
16 witnesses, and evidence presented at the conference shall not
17 be admissible at any subsequent proceeding on the claim. The
18 mediator shall not be called in to testify or give deposition
19 to resolve any claim for any hearing before the judge of
20 compensation claims. The employer may be represented by an
21 attorney at the mediation conference if the employee is also
22 represented by an attorney at the mediation conference.

23 (b) The parties shall complete the pretrial
24 stipulations before the conclusion of the mediation conference
25 if the claims, except for medical issues and attorney's fees
26 and costs, have not been settled and if any claims in any
27 filed petition for indemnity benefits remain unresolved. The
28 judge of compensation claims may impose sanctions against a
29 party or both parties for failing to complete the pretrial
30 stipulations before the conclusion of the mediation
31 conference.

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1 (4)(a) If the parties fail to agree upon written
2 submission of pretrial stipulations at the mediation
3 conference, the judge of compensation claims shall order a
4 pretrial hearing on the indemnity issues to occur within 14
5 days after the date of mediation ordered by the judge of
6 compensation claims. The judge of compensation claims shall
7 give the interested parties at least 7 days' advance notice of
8 the pretrial hearing by mail. At the pretrial hearing, the
9 judge of compensation claims shall, subject to paragraph (b),
10 set a date for the final hearing that allows the parties at
11 least 60 days to conduct discovery unless the parties consent
12 to an earlier hearing date.

13 (b) The final hearing on the indemnity issues must be
14 held and concluded within 90 days after the mediation
15 conference is held. Continuances may be granted only if the
16 requesting party demonstrates to the judge of compensation
17 claims that the reason for requesting the continuance arises
18 from circumstances beyond the party's control. The written
19 consent of the claimant must be obtained before any request
20 from a claimant's attorney is granted for an additional
21 continuance after the initial continuance has been granted.
22 Any order granting a continuance must set forth the date and
23 time of the rescheduled hearing. A continuance may be granted
24 only if the requesting party demonstrates to the judge of
25 compensation claims that the reason for requesting the
26 continuance arises from circumstances beyond the control of
27 the parties. The judge of compensation claims shall report any
28 grant of two or more continuances to the Deputy Chief Judge.

29 (c) The judge of compensation claims shall give the
30 interested parties at least 7 days' advance notice of the
31 final hearing, served upon the interested parties by mail.

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1 (d) The final hearing on the indemnity issues shall be
2 held within 210 days after receipt of the petition for
3 benefits in the county where the injury occurred, if the
4 injury occurred in this state, unless otherwise agreed to
5 between the parties and authorized by the judge of
6 compensation claims in the county where the injury occurred.
7 If the injury occurred outside the state and is one for which
8 compensation is payable under this chapter, then the final
9 hearing may be held in the county of the employer's residence
10 or place of business, or in any other county of the state that
11 will, in the discretion of the Deputy Chief Judge, be the most
12 convenient for a hearing. The final hearing shall be conducted
13 by a judge of compensation claims, who shall, within 30 days
14 after final hearing or closure of the hearing record, unless
15 otherwise agreed by the parties, enter a final order on the
16 merits of the disputed issues. The judge of compensation
17 claims may enter an abbreviated final order in cases in which
18 compensability is not disputed. Either party may request
19 separate findings of fact and conclusions of law. At the final
20 hearing, the claimant and employer may each present evidence
21 with respect to the claims presented by the petition for
22 benefits and may be represented by any attorney authorized in
23 writing for such purpose. ~~When there is a conflict in the~~
24 ~~medical evidence submitted at the hearing, the provisions of~~
25 ~~s. 440.13 shall apply . The report or testimony of the expert~~
26 ~~medical advisor shall be made a part of the record of the~~
27 ~~proceeding and shall be given the same consideration by the~~
28 ~~judge of compensation claims as is accorded other medical~~
29 ~~evidence submitted in the proceeding; and all costs incurred~~
30 ~~in connection with such examination and testimony may be~~
31 ~~assessed as costs in the proceeding, subject to the provisions~~

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1 ~~of s. 440.13. No judge of compensation claims may make a~~
2 ~~finding of a degree of permanent impairment that is greater~~
3 ~~than the greatest permanent impairment rating given the~~
4 ~~claimant by any examining or treating physician, except upon~~
5 ~~stipulation of the parties. Any benefit due but not raised at~~
6 ~~the final hearing which was ripe, due, or owing at the time of~~
7 ~~the final hearing is waived.~~

8 (e) The order making an award or rejecting the claim,
9 referred to in this chapter as a "compensation order," shall
10 set forth the findings of ultimate facts and the mandate; and
11 the order need not include any other reason or justification
12 for such mandate. The compensation order shall be filed in the
13 Office of the Judges of Compensation Claims at Tallahassee. A
14 copy of such compensation order shall be sent by mail to the
15 parties and attorneys of record at the last known address of
16 each, with the date of mailing noted thereon.

17 (f) Each judge of compensation claims is required to
18 submit a special report to the Deputy Chief Judge in each
19 contested workers' compensation case in which the case is not
20 determined within 30 days of final hearing or closure of the
21 hearing record. Said form shall be provided by the director of
22 the Division of Administrative Hearings and shall contain the
23 names of the judge of compensation claims and of the attorneys
24 involved and a brief explanation by the judge of compensation
25 claims as to the reason for such a delay in issuing a final
26 order.

27 ~~(g) Notwithstanding any other provision of this~~
28 ~~section, the judge of compensation claims may require the~~
29 ~~appearance of the parties and counsel before her or him~~
30 ~~without written notice for an emergency conference where there~~
31 ~~is a bona fide emergency involving the health, safety, or~~

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1 ~~welfare of an employee. An emergency conference under this~~
2 ~~section may result in the entry of an order or the rendering~~
3 ~~of an adjudication by the judge of compensation claims.~~

4 ~~(h) To expedite dispute resolution and to enhance the~~
5 ~~self-executing features of the Workers' Compensation Law, the~~
6 ~~Deputy Chief Judge shall make provision by rule or order for~~
7 ~~the resolution of appropriate motions by judges of~~
8 ~~compensation claims without oral hearing upon submission of~~
9 ~~brief written statements in support and opposition, and for~~
10 ~~expedited discovery and docketing. Unless the judge of~~
11 ~~compensation claims, for good cause, orders a hearing under~~
12 ~~paragraph (i), each claim in a petition relating to the~~
13 ~~determination of pay under s. 440.14 shall be resolved under~~
14 ~~this paragraph without oral hearing.~~

15 ~~(g)(i) To further expedite dispute resolution and to~~
16 ~~enhance the self-executing features of the system, those~~
17 ~~petitions filed in accordance with s. 440.192 that involve a~~
18 ~~claim for indemnity benefits of \$5,000 or less shall, in the~~
19 ~~absence of compelling evidence to the contrary, be presumed to~~
20 ~~be appropriate for expedited resolution under this paragraph;~~
21 ~~and any other claim filed in accordance with s. 440.192, upon~~
22 ~~the written agreement of both parties and application by~~
23 ~~either party, may similarly be resolved under this paragraph.~~
24 ~~A claim in a petition or \$5,000 or less for medical benefits~~
25 ~~only or a petition for reimbursement for mileage for medical~~
26 ~~purposes shall, in the absence of compelling evidence to the~~
27 ~~contrary, be resolved through the expedited dispute resolution~~
28 ~~process provided in this paragraph. For purposes of expedited~~
29 ~~resolution pursuant to this paragraph, the Deputy Chief Judge~~
30 ~~shall make provision by rule or order for expedited and~~
31 ~~limited discovery and expedited docketing in such cases. At~~

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1 least 15 days prior to hearing, the parties shall exchange and
2 file with the judge of compensation claims a pretrial outline
3 of all issues, defenses, and witnesses on a form adopted by
4 the Deputy Chief Judge; provided, in no event shall such
5 hearing be held without 15 days' written notice to all
6 parties. No pretrial hearing shall be held. The judge of
7 compensation claims shall limit all argument and presentation
8 of evidence at the hearing to a maximum of 30 minutes, and
9 such hearings shall not exceed 30 minutes in length. Neither
10 party shall be required to be represented by counsel. The
11 employer or carrier may be represented by an adjuster or other
12 qualified representative. The employer or carrier and any
13 witness may appear at such hearing by telephone. The rules of
14 evidence shall be liberally construed in favor of allowing
15 introduction of evidence.

16 ~~(h)(j)~~ A judge of compensation claims may, upon the
17 motion of a party or the judge's own motion, dismiss a
18 petition for lack of prosecution if a petition, response,
19 motion, order, request for hearing, or notice of deposition
20 has not been filed during the previous 12 months unless good
21 cause is shown. A dismissal for lack of prosecution is without
22 prejudice and does not require a hearing.

23 ~~(i)(k)~~ A judge of compensation claims may not award
24 interest on unpaid medical bills and the amount of such bills
25 may not be used to calculate the amount of interest awarded.
26 Regardless of the date benefits were initially requested,
27 attorney's fees do not attach under this subsection until 30
28 days after the date the carrier or self-insured employer
29 receives the petition.

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