

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1837 (PCB IN 03-02) Workers' Compensation
SPONSOR(S): Committee on Insurance and Berfield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	19 Y, 0 N	Thomas	Schulte
2) State Administration	4 Y, 0 N	Thomas	Everhart
3)			
4)			
5)			

SUMMARY ANALYSIS

On January 16, 2003, Speaker Byrd appointed the Select Committee on Workers' Compensation to identify measures to improve the availability and affordability of workers' compensation in Florida. On March 24, 2003, the Select Committee issued its findings and recommendations. The proposed committee bill, as originally drafted, implemented these recommendations. The PCB was heard on April 9, 2003, amended, and unanimously passed.

HB 1837 (PCB IN 03-02) by the Committee on Insurance and Rep. Berfield was heard in the Committee on Administration on April 14, 2003, amended, and unanimously passed.

The bill, as amended, implements specific recommendations relating to dispute resolution, attorneys' fees, employer immunity from liability, medical issues, reimbursement fee schedules, compensability, independent medical exams, indemnity and disability benefits, the joint underwriting plan, fraud and enforcement, exemptions, workplace safety, safety consultants, managed care arrangements, death benefits, drug-free workplace provisions, and procedures before the judges of compensation claims.

The bill does not have a direct fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1837a.sa.doc
DATE: April 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

On January 16, 2003, Speaker Byrd appointed the Select Committee on Workers' Compensation to identify measures to improve the availability and affordability of workers' compensation in Florida. The Select Committee was specifically charged to address the following four issues:

- Measures to improve availability and affordability of workers' compensation insurance;
- Measures to reduce fraud;
- Measures to assure that benefits for injured workers are adequate and equitable; and
- Measures to streamline the administration of the system.

The Select Committee met seven times and received valuable input from all stakeholders. The Select Committee took many hours of testimony from nearly 50 speakers and received numerous written presentations. At its final meeting, on March 20, 2003, the Select Committee achieved a consensus on recommendations for solutions that may be enacted this Legislative Session. On March 24, 2003, the Select Committee released its findings and recommendations. The proposed committee bill, as originally drafted, implemented these recommendations.

CONDITIONS OF THE MARKET IN FLORIDA

The Select Committee found that employers are increasingly frustrated with both the affordability and availability of workers' compensation insurance. Testimony by the Workers' Compensation Research Institute (WCRI) provided objective statistical research and information that tells much of the story in Florida. WCRI's key findings regarding Florida are:

- Florida has the lowest non-hospital medical provider reimbursement fee schedule among 40 reviewed states, being one of only two states that reimburse non-hospital medical providers less than what Medicare pays.
- Florida's hospital reimbursements are higher than most states.
- Permanent disability or impairment benefits are paid in 44 percent of cases.
- Statutory benefit formulas are lower than most other states, but actual impairment benefits paid are higher than average.

WCRI further reported that when the employer/carrier controls an employee's change of health care provider, medical costs were reduced by 7 to 10 percent. It was also shown that in Florida chiropractic cases are less costly than physician-directed physical therapy for back strains to get the same duration of disability, but this was not the case in states that did not limit the use of chiropractic care as in Florida.

Enterprise Florida reports that out of 45 comparison states, Florida ranks 44th (ahead of only California) in workers' compensation premium costs, and by far exceeds any other state in the Southeast. These costs are built into total labor costs which is the number two factor (behind availability of skilled labor) businesses give as location factors for their business. It is clear that these costs are hurting Florida's ability to attract businesses, thereby, limiting economic growth.

COST DRIVERS

The National Council on Compensation Insurance (NCCI) testified before the Select Committee regarding factors that were seen as cost drivers to the workers' compensation system in Florida. The three major costs drivers identified by NCCI are:

- The high frequency of permanent total disability (PTD) claims—five times higher than the national average;
- The high medical costs for permanent partial disability (PPD) claims—nearly two times higher than the national average; and
- The high medical costs for temporary total disability (TTD) claims—80 percent higher than the national average.

NCCI also identified other significant Florida cost drivers:

- Hospital costs are relatively high, which is a significant contributor to Florida's high medical costs.
- While Florida's physician reimbursement fee schedule is low, there may be high utilization of physician services or an expensive mix of services being provided.
- Florida does not have unusual types of injuries that would explain higher costs.
- Attorney involvement is significant in Florida and helps explain the major cost drivers. When attorneys are not involved, the difference in claim costs between Florida and the national average is minimal. When attorneys are involved, Florida's claim size is nearly 40 percent higher than the national average.
- Medical costs constitute the majority of total losses in Florida (63.6%), which is not the case nationwide (47.1%).

DISCUSSION

The purpose of the workers' compensation law is to ensure the prompt delivery of benefits to the injured worker and to facilitate the employee's return to gainful employment at reasonable cost to the employer. Further, the Legislative intent is that the system be self-executing and that the system not be an administrative or economic burden to the participants.

DISPUTE RESOLUTION

The Office of the Judges of Compensation Claims (OJCC) reported that 115,367 petitions were filed with their office during the fiscal year 2001 – 2002, an 18.76 percent increase from the prior year. This follows a long-term trend in petition filings, which has seen a 60 percent total increase since 1998, an increase that cannot be explained by a similar growth in job creation (and no increase in the number of judges hearing these cases). A vast majority of the petitions for benefits are settled between the parties. Testimony from the OJCC reported that about half of the petitions last year were pursued to the mandatory mediation phase and that about half of those were resolved in mediation.

The OJCC has 31 judges hearing the petitions and 31 mediators. In the last complete fiscal year, the judges entered about 40,000 orders approving complete settlements, another 26,500 orders resolving the disputed parts of ongoing cases, and about 2,400 final decisions on the merits of the case. This rise in demand on the judges and the mediators means longer waits for case resolution. Last year, the

Legislature authorized the use of private mediators, which helps with the availability of mediators, but costs four times as much to the system. Use of OJCC mediators is free, but is paid from assessments on the carriers at a cost of about \$100 per mediation. Private mediators cost the carrier about \$500 per mediation. Last year, the Legislature extended the time period for required mediation to 90 days, but the calendars of the many state mediators are booked 6 months in advance.

The OJCC reports that attorneys' fees for defending claims totaled about \$112 million for the last three quarters of the fiscal year, and reported claimants' fees amounted to approximately \$223 million. The operating budget of the OJCC was about \$15 million for the year. These stated costs of litigation, which do not include all costs, represents about \$350 million, or about \$3,000 per petition; however, many petitions may be related to a single case.

The Select Committee recommended:

- **Require each petition for benefits with the Office of Judges of Compensation Claims to include all issues that are ripe, due, and owing at the time the petition is filed.**

The bill adds subsection (9) to section 440.192, F.S., relating to petitions before the OJCC to implement the above recommendation. The bill also amends s. 440.25, F.S., to revise procedures for mediation and petitions for benefits. The revisions allow more time in the beginning of the petition process, without extending the total time to resolve petitions, to provide for greater opportunity to resolve cases in the mediation stage. The bill creates s. 440.1926, F.S., to provide for alternative dispute resolution through voluntary binding arbitration.

LEGAL REFORM

ATTORNEYS' FEES – The Select Committee heard testimony that hourly attorneys' fees in workers' compensation litigation are a significant cost driver and should be prohibited. The testimony supported the view that claims disputes are often unnecessarily extended and continued in order to increase the amount of attorneys' fees awarded, and that elimination of the hourly fee provision would encourage the furtherance of meritorious cases to the exclusion of those lacking justification.

INDEPENDENT APPEALS COMMISSION - Testimony was made calling for the creation of another level of appeal for orders of the OJCC. Currently, all appeals are heard by the First District Court of Appeal. Those supporting an independent workers' compensation panel believe an appellate commission staffed with experts in workers' compensation issues, who apply the intent of the system, would reinforce the appropriate "front-end" behavior of the system participants. These supporters further suggested that appeals from the independent panel go to the regional District Courts of Appeals and the Florida Supreme Court.

EMPLOYER IMMUNITY - Another issue that came before the Select Committee is that of employer immunity. Workers' Compensation laws were originally adopted as a tradeoff between employers and employees. The injured employee receives medical care and a portion of any lost income, but gives up the right to sue the employer in tort and the right to recover damages for pain and suffering. However, several areas exist whereby civil lawsuits relating to the workplace injury may occur. Two of these areas that provide for an employer to be sued are horizontal lawsuits and intentional injuries.

Horizontal lawsuits occur, for example, where several subcontractors are working for one general contractor and one of the subcontractor's employees suffers a workplace injury. Assuming the injury was not intentionally caused by the general contractor and the general contractor has workers' compensation coverage, the general contractor enjoys immunity for the injury, and workers' compensation benefits are provided to the injured worker. However, the other subcontractors may be sued under the theory of negligence. Testimony before the Select Committee recommended that these horizontal lawsuits be prohibited.

Employers may lose their immunity from civil liability for the injury if it is shown that actions by the employer were designed to intentionally cause the employee's injury or death. Case law has expanded this opening to allow civil lawsuits for cases of culpable liability where it can be shown the employer's conduct or inaction was substantially certain to result in the employee's injury or death.

The Select Committee recommended:

- **Restore horizontal immunity for all employers on a job site.**
- **Prohibit the award of hourly attorneys' fees in most cases, but ensure some incentive for attorneys to take small dollar claims.**
- **Provide that appeals from the Judges of Compensation Claims go first to an independent workers' compensation appeals commission and provide that appeals from the commission go to the respective District Courts of Appeals.**
- **Limit the allowance of civil suits against an employer by an injured worker to cases where it can be shown the employer acted with the intent to cause injury or death.**

The bill amends paragraph 440.10(1)(e), F.S., to restore horizontal immunity for all employers on a jobsite, except when the subcontractor is grossly negligent.

The bill amends subsection 440.34(2), F.S., to revise provisions relating to attorneys' fees. The bill sets a fixed rate for prevailing claimant attorney reimbursement; removes ability of a judge for compensation claims (JCC) to increase award; limits award to amount over last offer of settlement; eliminates hourly fees; reduces scheduled percentage amounts of contingency fees; and provides that nonprevailing party pays costs for the other party.

The bill amends subsection 440.11(1), F.S., to revise provisions relating to an employer's immunity from liability to implement the above recommendation on intentional actions by the employer.

The bill amends s. 440.11(3), F.S., to expand the immunity from third-party tortfeasor liability for safety consultants to apply to all employees on a jobsite.

MEDICAL

A good portion of the testimony before the Select Committee was made by medical providers and their representatives. One of the Select Committee's meetings was devoted entirely to presentations by medical providers. A strong theme of the testimony was that medical decisions should be left to medical professionals. Other testimony suggested the Legislature address the establishment of practice parameters. Discussion surrounded the issue of workplace injuries that can be the major contributing cause to additional injuries.

The Select Committee recommended:

- **Require the appropriate agency, after consultation with the Department of Financial Services (DFS), health professional associations, and health-related organizations, to adopt by rule scientifically sound practice parameters for medical procedures relevant to claimants; include pain management and psychiatry in the practice parameters.**

- **Provide that in order for an original work-related injury to be a major contributing cause of a subsequent injury, the original work-related injury must be more than 50 percent responsible for the subsequent injury and subsequent disability.**

The bill amends subsection (15) of section 440.13, F.S., to adopt national standard for workers' compensation medical practice parameters and protocols; requires use of practice parameters throughout chapter 440, F.S..

The bill amends subsection 440.09(1), F.S., to implement the above recommendation relating to major contributing cause of a subsequent injury; to provide that injuries sustained due to occupational disease or repetitive exposure must be demonstrated by clear and convincing evidence; and to provide that pain or subjective complaints alone, in the absence of objective relevant medical findings, are not compensable.

The bill amends various sections of chapter 440, F.S., relating to compensability of injuries. Section 440.093, F.S., is created to address mental and nervous injuries by requiring the presence of a physical injury needing medical treatment which is the major contributing cause of the mental or nervous injury; requiring clear and convincing evidence showing the injury; and limiting the duration of benefits for mental or nervous injuries to no more than 3 months after maximum medical improvement.

Section 440.02(1), F.S., is amended to provide that injuries caused by exposure to a toxic substance requires clear and convincing evidence establishing exposure to the substance at levels which can cause the injury sustained.

MEDICAL REIMBURSEMENT

The Select Committee heard a substantial amount of testimony regarding the present workers' compensation fee reimbursement provisions for medical providers. WCRI reported that Florida's reimbursement fees for non-hospital medical providers are among the very lowest nationwide (17% below Medicare) and that reimbursement fees for hospital medical providers are one of the very highest nationwide.

Testimony suggested the current reimbursement levels encourage behavior that may include over-utilization of some medical services. Other resulting manipulative behavior may be malingering injuries to prolong benefits, obstruction of return-to-work processes, delays in authorizing benefits, and increased and longer litigation. It was reported that low reimbursement fees keep many medical providers out of the system, limiting access and quality of medical care. Many speakers called for non-hospital medical provider fees to be set at some multiple of Medicare.

The Select Committee recommended:

- **Provide for reimbursement of non-hospital medical services at an amount that is at least 125 percent of the Medicare reimbursement schedule.**
- **Require the three-member panel to rewrite the current reimbursement schedule for hospital per-diem charges. The revised schedule may take into account a distinction between a surgical and a non-surgical stay, as well as the distinction between acute and trauma care, but must reduce the existing per-diem schedule by at least 15 percent. Require the three-member panel to rewrite the health care provider fee-for-service reimbursement schedule. Require revised schedules to be cost-neutral to employers and carriers relative to existing fees and schedules.**
- **Allow the health care provider and the employer or its carrier to contract for fees other than the adopted reimbursement schedules.**

The bill amends subsection 440.13(12), F.S., to revise provisions relating to medical fee reimbursement schedules. The bill provides for revisions to current medical reimbursement fee schedules to reach reimbursement at 125 percent of the Medicare reimbursement fee schedule for primary care physicians, neurosurgeons, and orthopedists certain services, and a reduction in hospital non-surgical services for clinical laboratories, radiology, physical therapy, speech therapy, and occupational therapy. The revised schedule must be cost neutral compared to existing total medical reimbursement. The bill provides that pharmacist dispensing fees shall be set at the wholesale cost, plus \$2.00.

INDEMNITY BENEFITS

Indemnity benefits are those benefits paid to injured workers in lieu of lost wages as a result of not being able to work due to a workplace injury. Discussion surrounded the current impairment rating and whether it needed to be revised. Another issue of discussion was problems with determining an employee's average weekly wage for purposes of setting entitled statutory benefits. It was suggested a significant amount of litigation surrounds this issue and it could be avoided with some definitional clarification.

The Select Committee recommended:

- **Increase impairment benefits to the full compensation rate.**
- **Provide clarity and certainty to the definition of "average weekly wage."**

The bill amends subsection 440.14(1), F.S., to redefine "average weekly wage" and to provide that the average will be used if the injured employee worked 75% of the 13 week period (presently 90%).

The bill amends subsection 440.15(3), F.S., to increase impairment income benefits to 75% of the full compensation rate (66.66% of average weekly wage). This is a 50% increase from the current benefit of 50% of the full compensation rate. The bill amends s. 440.15(3) to eliminate the payment of any supplemental permanent impairment benefits.

PERMANENT PARTIAL AND PERMANENT TOTAL DISABILITY CLAIMS

The Select Committee heard testimony that Florida's benefits for permanent partial disability (PPD) and permanent total disability (PTD) claims are low. However, as reported by the WCRI, Florida has five times as many PTD claims compared to the national average. Due to the higher frequency of claims, Florida's total cost for PTD claims is almost three times higher than the national average, and the cost of PPD claims is twice as high. Testimony suggested the Legislature tighten the standard to receive PTD benefits; address impairment ratings; eliminate the provision that ties a claimant's PTD eligibility status to federal Social Security benefits; and end payment of PTD supplemental benefits at an age certain, unless a claimant becomes injured after that age, after which the claimant would receive supplemental payments for 5 years.

As part of the last major reform of workers' compensation laws almost 10 years ago, the Legislature provided that an employee is eligible for PTD benefits if the injury qualifies the employee for disability or supplemental benefits under the Social Security Act. The Select Committee heard testimony that this provision is a substantial contributor to the large numbers of costs and frequency of PTD benefits in Florida and that this provision was not intended to be used in this way. While the statute provides for PTD benefits for specifically defined catastrophic injuries, the use of the Social Security standard has allowed for PTD lifetime benefits in many more instances.

The Select Committee recommended:

- **Eliminate the provision that ties a claimant's PTD eligibility to the federal Social Security disability income standard.**
- **End PTD indemnity benefits at age 70, but allow at least 5 years of benefits from the date of injury for those workers injured after the age of 65.**
- **End supplemental benefits at the age of 62.**

The bill amends subsection 440.02(38), F.S., relating to the definition of "catastrophic injury" to remove reference to the federal Social Security disability income standard and to limit the type of injuries which are automatically included.

The bill amends subsection 440.15, F.S., to implement the above recommendations on the termination dates for PTD benefits and supplemental benefits and to create a new standard for permanent total disability claims for injured workers who are unable to find any type of employment within a 50 mile radius of the employee's residence.

JOINT UNDERWRITING ASSOCIATION (JUA)

In 1993 the Legislature provided for a joint underwriting plan for workers' compensation insurance. The purpose of the plan was to provide policies to employers who are entitled to coverage, but are able to purchase a policy through the voluntary market. Because of the poor market conditions of the voluntary market, more and more employers are being forced to go to the plan to obtain coverage. The cost of policies under the plan is significantly higher through the voluntary market. The high rates are intended to assure that Joint Underwriting Association (JUA) is a market of last resort and to minimize the possibility that JUA under pricing will result in surcharges on non-JUA workers' compensation premiums.

While it is hoped reform efforts will increase the availability of policies through the voluntary market, the Select Committee heard testimony suggesting the Legislature make some changes to the existing joint underwriting plan to help smaller employers with their premium costs through the plan. Acknowledging that reform efforts may take a while to have a substantial impact on the voluntary market, it was suggested the Legislature provide for subplans for smaller employers.

The Select Committee recommended:

- **Authorize the JUA to create additional subplans for small employers, with rates that do not exceed 125 percent of the voluntary market rates but are still high enough to prevent the JUA from competing with the voluntary market.**
- **Prohibit the JUA from levying assessments on any person or entity other than a JUA policyholder.**

The bill amends subsection 631.311(4), F.S., to revise provisions relating to the joint underwriting plan to implement the above recommendations. The bill also creates a subplan for non-profit charitable corporations at 110% of voluntary market rates.

FRAUD, COMPLIANCE, AND ENFORCEMENT

Testimony before the Select Committee indicated that fraud is on the top of everyone's list as a serious contributor to costs, as well as to the high level of frustration. Testimony further indicated that concerns are divided between employee fraud, employer fraud, and carrier compliance. Description of employee

fraud involved incidents of clear-cut, deceitful conduct. Employer fraud is more insidious and contributes more to costs through lost available premium dollars for the system. Employer fraud was presented as involving premium avoidance by under-reporting the employer's payroll, misrepresenting employee classifications, inappropriately claiming exemptions, or failing to acquire coverage at all. Another example of employer fraud was employers from other states working in Florida, but not reporting their payroll as Florida payroll and, therefore, benefiting by lower premiums and unfairly competing with Florida businesses that legitimately report their payroll.

All provable fraud rises to the level of a criminal violation, but evidentiary standards make these cases difficult. Testimony revealed areas where the penalties and enforcement resources were limited, especially for prosecutors. DFS handles its criminal investigations through the Bureau of Workers' Compensation Fraud within the Division of Insurance Fraud. Administrative compliance issues are handled by the Bureau of Compliance within the Division of Workers' Compensation in DFS.

Another consensus among the presentations and public testimony called for tough enforcement of workers' compensation regulatory laws. While there is a uniform call for stronger sanctions and tighter standards, there is also a recognition that much of the present detrimental behavior is already unlawful and that more laws, without effective enforcement, will not solve many problems.

During the 2002 Legislative Session, compliance and enforcement responsibilities, which are housed within the Division of Workers' Compensation, were transferred from the Department of Labor and Employment Security to the Department of Insurance and are now in the DFS. The Division's authority to issue stop-work orders is limited to an employer's failure to secure coverage or misrepresentation of payroll. The Bureau of Workers' Compensation Fraud within DFS' Division of Insurance Fraud enforces criminal violations of compliance laws.

The Select Committee recommended:

- **Provide authority to impose administrative sanctions on employers that materially misclassify employees or underreport payroll.**
- **Provide that stop-work orders or unpaid penalties against a corporation are applicable to another corporation formed with the same principals and engaged in the same enterprise or a related enterprise.**
- **Require out-of-state employers who have employees performing work in Florida to have a Florida policy or endorsement using Florida rates and rules.**
- **Provide an administrative penalty for an employer who conducts any business operations following the service of a stop-work order.**
- **Provide administrative penalties for an employer who fails to maintain required business records or fails to produce records upon request.**
- **Increase criminal penalties for workers' compensation fraud by one degree of severity.**
- **Require the DFS to provide the Legislature with a listing of any provisions of chapter 440, Florida Statutes, relating to carrier compliance and enforcement, or any administrative rule relating to carrier compliance and enforcement, that the department feels it is unable to enforce. Require the department to include in that list any other impediment to enforcement resulting from the recent reorganization of the department and the transfer of activities from the former Department of Labor and Employment Security.**

The bill amends sections 440.10, (out-of-state employers), 440.105 (penalties), 440.1051 (penalties), 440.107 (department powers and penalties), 440.38 (out-of-state employers), 440.381 (fraudulent applications), and 440.525, F.S. (penalties), to revise provisions relating to fraud, compliance, and enforcement to implement the above recommendations. The bill amends s. 440.20, F.S., to provide for tougher penalties and enforcement relating to carrier compliance.

EXEMPTIONS

Florida law provides many exemptions and exceptions from the mandatory provisions of the workers' compensation system. Exemptions require the exempt employer to elect the exemption and opt out of the mandatory coverage. Exceptions require no action by the excepted employer. The law separates exemptions for non-construction industries from those for the construction industry. For non-construction industries, coverage is required for all public employers and all private employers with four or more employees, with some specific exceptions and exemptions. For the construction industry, employers with one or more employees must obtain coverage, with some specific exceptions for sole proprietors, partners, and corporate officers.

Coverage of the construction industry has been treated differently because of the nature of the hazardous work performed on construction job sites. With greater risk come higher premiums and more pressure to avoid obtaining coverage. The Select Committee heard a great deal of testimony regarding fraud and how exemptions play a large role in certain types of premium fraud. Employers are said to exploit these exemptions to classify actual workers as owners, partners, and corporate officers, thus avoiding the payment of premiums. With so many premium dollars lost, remaining employers who obtain the required coverage pay much higher premiums.

The Select Committee recommended:

- **Limit the construction industry exemption to no more than three corporate officers, and require each exempt officer to own at least 10 percent of the corporation.**
- **Repeal the \$250,000 commercial exemption limitation created by SB 108 (chapter 2002-236, Laws of Florida).**

The bill amends sections 440.02, 440.05, 440.077, 440.10, F.S., to revise provisions relating to definitions and exemptions to implement the above recommendations. The bill repeals the commercial exemption limitation upon the bill becoming law and implements the new exemption provisions on January 1, 2004. The bill exempts developmentally disabled Medicaid clients under Adult Day Training Services and their employers from the mandatory provisions of workers' compensation.

WORKPLACE SAFETY

It is estimated that approximately 290,000 workplace injuries occur each year in Florida. Florida law requires carriers and employers to report each case that results in lost time to the Division of Workers' Compensation. Over the past 10 years, the lost-time injuries have consistently stayed at about 80,000 reports annually. Of the reported lost-time injuries, over 62 percent of all reported injuries are a result of sprains and strains (44.2%), contusions (11.2%), and fractures (7.3%).

The University of South Florida SafetyFlorida Consultation Program is administered by the USF College of Public Health and receives \$1.8 million from OSHA and \$180,000 from the state. The program works with employers in the private sector to ensure compliance with OSHA laws and to improve workplace safety. The program operates in cooperation with the Florida Partnership for Safety and Health, which works on workplace safety with public employers.

The Select Committee recommended:

- **Require the Division of Workers' Compensation to publicize on its Internet site, and encourage carriers to publicize the availability of free safety consultation services and safety program resources.**
- **Provide that both public and private employers may be eligible for safety program premium credits.**
- **Mandate that employers participating in the JUA participate in a safety training or evaluation program.**

The bill amends section 440.1025, F.S., and subparagraph 631.311(4)(c)11., F.S., to revise provisions relating to workplace safety programs and the joint underwriting plan to implement the above recommendations.

OTHER ISSUES

The bill addresses other issues that were not part of the Select Committee's report. These issues are as follows:

DRUG-FREE WORKPLACE: The bill creates s. 440.09(9), F.S., to revise requirements regarding drug testing; requires employee, as part of his or her burden in rebutting the presumption of a positive drug test, to show more than just the employee's denial of being under the influence.

MANAGED CARE: The bill amends s. 440.134, F.S., to revise provisions relating to managed care arrangements to include chiropractors and podiatrists as medical care coordinators.

DEATH BENEFITS: The bill amends s. 440.16, F.S., to increase funeral expense benefits to \$7,500 (from \$5,000) and death benefits to \$150,000 (from \$100,000).

C. SECTION DIRECTORY:

Section 1: Amends s. 440.02, F.S., relating to definitions.

Section 2: Amends s. 440.02, F.S., relating to definitions, effective January 1, 2004.

Section 3: Amends s. 440.05, F.S., relating to exemptions, effective January 1, 2004.

Section 4: Amends s. 440.06, F.S., relating to failure to secure compensation.

Section 5: Amends s. 440.077, F.S., relating to exemptions for corporate officers, effective January 1, 2004.

Section 6: Amends s. 440.09, F.S., relating to subsequent injuries.

Section 7: Creates s. 440.093, F.S., relating to mental and nervous injuries.

Section 8: Amends s. 440.10, F.S., relating to employer liability for securing compensation benefits, effective January 1, 2004.

Section 9: Amends s. 440.1025, F.S., relating to work safety programs.

Section 10: Amends s. 440.103, F.S., relating to building permits.

Section 11: Amends s. 440.105, F.S., relating to penalties.

Section 12: Amends s. 440.1051, F.S., relating to penalties.

Section 13: Amends s. 440.107, F.S., relating to powers of the Department of Financial Services.

Section 14: Amends s. 440.11, F.S., relating to employer liability.

Section 15: Amends s. 440.13, F.S., relating to practice parameters and medical reimbursement.

Section 16: Amends s. 440.134, F.S., relating to managed care arrangements.

Section 17: Amends s. 440.14, F.S., relating to the calculation of average weekly wage.

Section 18: Amends s. 440.15, F.S., relating to benefits.

Section 19: Amends s. 440.151, F.S., relating to occupational diseases.

Section 20: Amends s. 440.16, F.S., relating to death benefits.

Section 21: Amends s. 440.185, F.S., relating to notice of injury.

Section 22: Amends s. 440.192, F.S., relating to petitions for benefits.

Section 23: Creates s. 440.1926, F.S., relating to alternative dispute resolution.

Section 24: Amends s. 440.20, F.S., relating to time for payment of compensation.

Section 25: Amends s. 440.25, F.S., relating to procedures for mediation and hearings.

Section 26: Amends s. 440.34, F.S., relating to attorneys' fees.

Section 27: Amends s. 440.38, F.S., to provide a requirement regarding coverage from outside the state.

Section 28: Amends s. 440.381, F.S., to provide a criminal penalty for unlawful applications.

Section 29: Amends s. 440.42, F.S., relating to insurance policies.

Section 30: Amends s. 440.49, F.S., relating to the Special Disability Trust Fund; correcting a cross-reference.

Section 31: Amends s. 440.491, F.S., relating to reemployment of injured workers; correcting a cross-reference.

Section 32: Amends s. 440.525, F.S., relating to examination of carriers.

Section 33: Amends s. 627.162, F.S., relating to payment of delinquency and collection fees.

Section 34: Amends s. 627.311, F.S., to provide an additional subplan under the joint underwriting plan.

Section 35: Amends s. 921.0022, F.S., to revise offense severity chart to reflect changes in penalties made under the bill.

Section 36: Requires a report from the Department of Financial Services.

Section 37: Amends s. 946.523, relating to prison industry enhancement programs; correcting a cross-reference.

Section 38: Amends s. 985.315, relating to vocational work-related programs; correcting a cross-reference.

Section 39: Repeals s. 440.1925, F.S., relating to resolution of disputes.

Section 40: Provides an effective date of October 1, 2003, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has no direct impact on local government revenues.

2. Expenditures:

The bill has no direct fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to have a positive economic impact on the private sector, however, its impact is unknown at this time. Many of the provisions help reduce costs, including eliminating and tightening exemptions, increasing penalties and enforcement, limiting attorney fees, streamlining procedures before the judges of compensation claims, limiting eligibility for permanent total disability benefits, limiting the duration of permanent total disability benefits, addressing the definition of average weekly wage and major contributing cause of subsequent injuries, tightening eligibility for compensable injuries, expanding employer and safety consultant immunity from liability, providing greater focus on workplace safety, and placing the burden on injured employees who test positive for illegal drugs to show the amount was insignificant. The bill should help availability of workers' compensation through the creation of a subplan under the joint underwriting association for small employers and non-profit charitable organizations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require cities or counties to spend funds or take an action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The committee substitute incorporates a strike-all amendment that was adopted by the Committee on State Administration. The amendment makes no changes to the provisions in the bill as filed on exemptions, permanent total disability benefits, liability for intentional torts, the definition of major contributing cause, workplace safety, safety consultant liability, drug-free workplace

The amendment made minor changes to the determination of average weekly wage, horizontal immunity, the joint underwriting association, and compliance for out-of-state employers.

The amendment revised provisions in the bill relating to medical reimbursement to reflect a cost-neutral approach between hospitals and physicians; to adopt national practice parameters instead of by rule; to increase death benefits by 50 percent rather than by 100%, and to procedures before the judges of compensation claims.

The amendment removed provisions in the bill creating an independent appeals commission.

The amendment removed provisions in the bill revising the administrative structure and rulemaking for the judges of compensation claims.

The amendment revised provisions in the bill relating to attorneys fees, compensability, independent medical exams, and takes a tougher stance on enforcement, penalties, and carrier compliance.

The amendment created a section on alternative dispute resolution which allows for voluntary binding arbitration.