

By Senator Aronberg

27-1568-03

See HB 927

1                                   A bill to be entitled  
 2           An act relating to workers' compensation;  
 3           amending s. 440.14, F.S.; revising the basis  
 4           upon which to compute average weekly wages for  
 5           purposes of compensation; providing an  
 6           effective date.

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

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10           Section 1. Subsection (1) of section 440.14, Florida  
11 Statutes, is amended to read:

12           440.14 Determination of pay.--

13           (1) Except as otherwise provided in this chapter, the  
14 average weekly wages of the injured employee as of the date of  
15 the accident ~~at the time of the injury~~ shall be taken as the  
16 basis upon which to compute compensation and shall be  
17 determined, subject to the limitations of s. 440.12(2), as  
18 follows:

19           (a) If the injured employee has worked in the  
20 employment in which she or he was working as of the date of  
21 the accident ~~at the time of the injury~~, whether for the same  
22 or another employer, during substantially the whole of 13  
23 weeks immediately preceding the injury, her or his average  
24 weekly wage shall be one-thirteenth of the total amount of  
25 wages earned in such employment during the 13 weeks. As used  
26 in this paragraph, the term "substantially the whole of 13  
27 weeks" means the calendar ~~shall be deemed to mean and refer to~~  
28 ~~a constructive~~ period of 13 weeks as a whole, which shall be  
29 defined as the 13 weeks before the date of the accident,  
30 excluding the week during which the accident occurred. ~~a~~  
31 ~~consecutive period of 91 days, and~~ The term "during

1 substantially the whole of 13 weeks" shall be deemed to mean  
2 during not less than 75 ~~90~~ percent of the total customary  
3 ~~full-time~~ hours of employment within such period considered as  
4 a whole.

5 (b) If the injured employee has not worked in such  
6 employment during substantially the whole of 13 weeks  
7 immediately preceding the injury, the wages of a similar  
8 employee in the same employment who has worked substantially  
9 the whole of such 13 weeks shall be used in making the  
10 determination under the preceding paragraph.

11 (c) If an employee is a seasonal worker and the  
12 foregoing method cannot be fairly applied in determining the  
13 average weekly wage, then the employee may use, instead of the  
14 13 weeks immediately preceding the injury, the calendar year  
15 or the 52 weeks immediately preceding the injury. The employee  
16 will have the burden of proving that this method will be more  
17 reasonable and fairer than the method set forth in paragraphs  
18 (a) and (b) and, further, must document prior earnings with  
19 W-2 forms, written wage statements, or income tax returns. The  
20 employer shall have 30 days following the receipt of this  
21 written proof to adjust the compensation rate, including the  
22 making of any additional payment due for prior weekly  
23 payments, based on the lower rate compensation.

24 (d) If any of the foregoing methods cannot reasonably  
25 and fairly be applied, the full-time weekly wages of the  
26 injured employee shall be used, except as otherwise provided  
27 in paragraph (e) or paragraph (f).

28 (e) If it is established that the injured employee was  
29 under 22 years of age when injured and that under normal  
30 conditions her or his wages should be expected to increase  
31

1 during the period of disability, the fact may be considered in  
2 arriving at her or his average weekly wages.

3 (f) If it is established that the injured employee was  
4 a part-time worker at the time of the injury, that she or he  
5 had adopted part-time employment as a customary practice, and  
6 that under normal working conditions she or he probably would  
7 have remained a part-time worker during the period of  
8 disability, these factors shall be considered in arriving at  
9 her or his average weekly wages. For the purpose of this  
10 paragraph, the term "part-time worker" means an individual who  
11 customarily works less than the full-time hours or full-time  
12 workweek of a similar employee in the same employment.

13 (g) If compensation is due for a fractional part of  
14 the week, the compensation for such fractional part shall be  
15 determined by dividing the weekly compensation rate by the  
16 number of days employed per week to compute the amount due for  
17 each day.

18 Section 2. This act shall take effect upon becoming a  
19 law.