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

6  
7   Be It Enacted by the Legislature of the State of Florida:

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

11           440.14 Determination of pay.--

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

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



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31 mean during not less than 75 ~~90~~ percent of the total customary  
32 ~~full-time~~ hours of employment within such period considered as a  
33 whole.

34 (b) If the injured employee has not worked in such  
35 employment during substantially the whole of 13 weeks  
36 immediately preceding the injury, the wages of a similar  
37 employee in the same employment who has worked substantially the  
38 whole of such 13 weeks shall be used in making the determination  
39 under the preceding paragraph.

40 (c) If an employee is a seasonal worker and the foregoing  
41 method cannot be fairly applied in determining the average  
42 weekly wage, then the employee may use, instead of the 13 weeks  
43 immediately preceding the injury, the calendar year or the 52  
44 weeks immediately preceding the injury. The employee will have  
45 the burden of proving that this method will be more reasonable  
46 and fairer than the method set forth in paragraphs (a) and (b)  
47 and, further, must document prior earnings with W-2 forms,  
48 written wage statements, or income tax returns. The employer  
49 shall have 30 days following the receipt of this written proof  
50 to adjust the compensation rate, including the making of any  
51 additional payment due for prior weekly payments, based on the  
52 lower rate compensation.

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

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



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

62 (f) If it is established that the injured employee was a  
63 part-time worker at the time of the injury, that she or he had  
64 adopted part-time employment as a customary practice, and that  
65 under normal working conditions she or he probably would have  
66 remained a part-time worker during the period of disability,  
67 these factors shall be considered in arriving at her or his  
68 average weekly wages. For the purpose of this paragraph, the  
69 term "part-time worker" means an individual who customarily  
70 works less than the full-time hours or full-time workweek of a  
71 similar employee in the same employment.

72 (g) If compensation is due for a fractional part of the  
73 week, the compensation for such fractional part shall be  
74 determined by dividing the weekly compensation rate by the  
75 number of days employed per week to compute the amount due for  
76 each day.

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