

By Senator Alexander

17-887-05

See HB 35

1 A bill to be entitled

2 An act relating to workers' compensation for

3 first responders; amending s. 440.02, F.S.;

4 revising and providing definitions; amending s.

5 440.09, F.S.; revising provisions relating to

6 compensation for occupational diseases and

7 repetitive exposure to provide an exception for

8 first responders; amending s. 440.091, F.S.;

9 providing that certain conditions relating to

10 smallpox vaccinations are an injury by accident

11 arising out of the employment for purposes of

12 ch. 440, F.S.; amending s. 440.093, F.S.;

13 providing conditions for compensation for first

14 responders for cases involving mental or

15 nervous injuries; providing additional

16 conditions for payment of indemnity benefits

17 under ch. 440, F.S.; providing an exception

18 with regard to determination of mental and

19 nervous injuries; amending s. 440.15, F.S.;

20 providing an additional exception with regard

21 to compensation for permanent total disability;

22 amending s. 440.151, F.S.; providing an

23 exception with regard to compensation for

24 occupational diseases; amending s. 440.34,

25 F.S.; providing factors to be considered by a

26 judge of compensation claims in awarding

27 attorney's fees and costs in cases involving

28 first responders; providing an effective date.

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

31

1 Section 1. Subsection (1) of section 440.02, Florida
2 Statutes, is amended, and subsection (42) is added to that
3 section, to read:

4 440.02 Definitions.--When used in this chapter, unless
5 the context clearly requires otherwise, the following terms
6 shall have the following meanings:

7 (1) "Accident" means only an unexpected or unusual
8 event or result that happens suddenly. Disability or death due
9 to the accidental acceleration or aggravation of a venereal
10 disease or of a disease due to the habitual use of alcohol or
11 controlled substances or narcotic drugs, or a disease that
12 manifests itself in the fear of or dislike for an individual
13 because of the individual's race, color, religion, sex,
14 national origin, age, or handicap is not an injury by accident
15 arising out of the employment. Subject to s. 440.15(5), if a
16 preexisting disease or anomaly is accelerated or aggravated by
17 an accident arising out of and in the course of employment,
18 only acceleration of death or acceleration or aggravation of
19 the preexisting condition reasonably attributable to the
20 accident is compensable, with respect to any compensation
21 otherwise payable under this chapter. Except for cases
22 involving a first responder, an injury or disease caused by
23 exposure to a toxic substance, including, but not limited to,
24 fungus or mold, is not an injury by accident arising out of
25 the employment unless there is clear and convincing evidence
26 establishing that exposure to the specific substance involved,
27 at the levels to which the employee was exposed, can cause the
28 injury or disease sustained by the employee.

29 (42) "First responder" means a law enforcement officer
30 as defined in s. 943.10, a firefighter as defined in s.
31 633.30, and an emergency medical technician or a paramedic as

1 defined in s. 401.23 employed by state or local government. A
2 volunteer firefighter engaged by state or local government is
3 also considered a first responder for purposes of this
4 chapter.

5 Section 2. Subsection (1) of section 440.09, Florida
6 Statutes, is amended to read:

7 440.09 Coverage.--

8 (1) The employer must pay compensation or furnish
9 benefits required by this chapter if the employee suffers an
10 accidental compensable injury or death arising out of work
11 performed in the course and the scope of employment. The
12 injury, its occupational cause, and any resulting
13 manifestations or disability must be established to a
14 reasonable degree of medical certainty, based on objective
15 relevant medical findings, and the accidental compensable
16 injury must be the major contributing cause of any resulting
17 injuries. For purposes of this section, "major contributing
18 cause" means the cause which is more than 50 percent
19 responsible for the injury as compared to all other causes
20 combined for which treatment or benefits are sought. Except
21 for cases involving a first responder, in cases involving
22 occupational disease or repetitive exposure, both causation
23 and sufficient exposure to support causation must be proven by
24 clear and convincing evidence. Pain or other subjective
25 complaints alone, in the absence of objective relevant medical
26 findings, are not compensable. For purposes of this section,
27 "objective relevant medical findings" are those objective
28 findings that correlate to the subjective complaints of the
29 injured employee and are confirmed by physical examination
30 findings or diagnostic testing. Establishment of the causal
31 relationship between a compensable accident and injuries for

1 conditions that are not readily observable must be by medical
2 evidence only, as demonstrated by physical examination
3 findings or diagnostic testing. Major contributing cause must
4 be demonstrated by medical evidence only.

5 (a) This chapter does not require any compensation or
6 benefits for any subsequent injury the employee suffers as a
7 result of an original injury arising out of and in the course
8 of employment unless the original injury is the major
9 contributing cause of the subsequent injury. Major
10 contributing cause must be demonstrated by medical evidence
11 only.

12 (b) If an injury arising out of and in the course of
13 employment combines with a preexisting disease or condition to
14 cause or prolong disability or need for treatment, the
15 employer must pay compensation or benefits required by this
16 chapter only to the extent that the injury arising out of and
17 in the course of employment is and remains more than 50
18 percent responsible for the injury as compared to all other
19 causes combined and thereafter remains the major contributing
20 cause of the disability or need for treatment. Major
21 contributing cause must be demonstrated by medical evidence
22 only.

23 (c) Death resulting from an operation by a surgeon
24 furnished by the employer for the cure of hernia as required
25 in s. 440.15(6) [F.S. 1981] shall for the purpose of this
26 chapter be considered to be a death resulting from the
27 accident causing the hernia.

28 (d) If an accident happens while the employee is
29 employed elsewhere than in this state, which would entitle the
30 employee or his or her dependents to compensation if it had
31 happened in this state, the employee or his or her dependents

1 are entitled to compensation if the contract of employment was
2 made in this state, or the employment was principally
3 localized in this state. However, if an employee receives
4 compensation or damages under the laws of any other state, the
5 total compensation for the injury may not be greater than is
6 provided in this chapter.

7 Section 3. Subsection (4) is added to section 440.091,
8 Florida Statutes, to read:

9 440.091 Law enforcement officer, firefighter,
10 emergency medical technician, or paramedic; when acting within
11 the course of employment.--

12 (4) Any adverse result or complication related to a
13 smallpox vaccination of a first responder shall be deemed to
14 be an injury by accident arising out of work performed in the
15 course and the scope of employment.

16 Section 4. Subsections (1) and (2) of section 440.093,
17 Florida Statutes, are amended to read:

18 440.093 Mental and nervous injuries.--

19 (1) A mental or nervous injury due to stress, fright,
20 or excitement only is not an injury by accident arising out of
21 the employment. Except for cases involving a first responder,
22 nothing in this section shall be construed to allow for the
23 payment of benefits under this chapter for mental or nervous
24 injuries without an accompanying physical injury requiring
25 medical treatment. A physical injury resulting from mental or
26 nervous injuries unaccompanied by physical trauma requiring
27 medical treatment shall not be compensable under this chapter,
28 unless the physical injury is to a first responder. For cases
29 involving a first responder, payment of medical benefits under
30 this chapter for mental or nervous injuries shall be made even
31 if the first responder's mental or nervous injury is

1 unaccompanied by a physical injury. However, for cases
2 involving a first responder, payment of indemnity benefits
3 under this chapter for mental and nervous injuries shall not
4 be made unless a physical injury accompanies the mental or
5 nervous injury.

6 (2) Except for cases involving a first responder,
7 mental or nervous injuries occurring as a manifestation of an
8 injury compensable under this chapter shall be demonstrated by
9 clear and convincing medical evidence by a licensed
10 psychiatrist meeting criteria established in the most recent
11 edition of the diagnostic and statistical manual of mental
12 disorders published by the American Psychiatric Association.
13 The compensable physical injury must be and remain the major
14 contributing cause of the mental or nervous condition and the
15 compensable physical injury as determined by reasonable
16 medical certainty must be at least 50 percent responsible for
17 the mental or nervous condition as compared to all other
18 contributing causes combined. Compensation is not payable for
19 the mental, psychological, or emotional injury arising out of
20 depression from being out of work or losing employment
21 opportunities, resulting from a preexisting mental,
22 psychological, or emotional condition or due to pain or other
23 subjective complaints that cannot be substantiated by
24 objective, relevant medical findings.

25 Section 5. Paragraph (f) of subsection (1) of section
26 440.15, Florida Statutes, is amended to read:

27 440.15 Compensation for disability.--Compensation for
28 disability shall be paid to the employee, subject to the
29 limits provided in s. 440.12(2), as follows:

30 (1) PERMANENT TOTAL DISABILITY.--

31

1 (f)1. If permanent total disability results from
2 injuries that occurred subsequent to June 30, 1955, and for
3 which the liability of the employer for compensation has not
4 been discharged under s. 440.20(11), the injured employee
5 shall receive additional weekly compensation benefits equal to
6 3 percent of her or his weekly compensation rate, as
7 established pursuant to the law in effect on the date of her
8 or his injury, multiplied by the number of calendar years
9 since the date of injury. The weekly compensation payable and
10 the additional benefits payable under this paragraph, when
11 combined, may not exceed the maximum weekly compensation rate
12 in effect at the time of payment as determined pursuant to s.
13 440.12(2). These supplemental payments shall not be paid or
14 payable after the employee attains age 62, regardless of
15 whether the employee has applied for or is eligible to apply
16 for social security benefits under 42 U.S.C. s. 402 or s. 423,
17 unless the employee is not eligible for social security
18 benefits under 42 U.S.C. s. 402 or s. 423 either because the
19 employee's compensable injury has prevented the employee from
20 working sufficient quarters to be eligible for such benefits
21 or, in cases involving a first responder, the employer does
22 not participate in the social security program. These
23 supplemental benefits shall be paid by the department out of
24 the Workers' Compensation Administration Trust Fund when the
25 injury occurred subsequent to June 30, 1955, and before July
26 1, 1984. These supplemental benefits shall be paid by the
27 employer when the injury occurred on or after July 1, 1984.
28 Supplemental benefits are not payable for any period prior to
29 October 1, 1974.

30 2.a. The department shall provide by rule for the
31 periodic reporting to the department of all earnings of any

1 nature and social security income by the injured employee
2 entitled to or claiming additional compensation under
3 subparagraph 1. Neither the department nor the employer or
4 carrier shall make any payment of those additional benefits
5 provided by subparagraph 1. for any period during which the
6 employee willfully fails or refuses to report upon request by
7 the department in the manner prescribed by such rules.

8 b. The department shall provide by rule for the
9 periodic reporting to the employer or carrier of all earnings
10 of any nature and social security income by the injured
11 employee entitled to or claiming benefits for permanent total
12 disability. The employer or carrier is not required to make
13 any payment of benefits for permanent total disability for any
14 period during which the employee willfully fails or refuses to
15 report upon request by the employer or carrier in the manner
16 prescribed by such rules or if any employee who is receiving
17 permanent total disability benefits refuses to apply for or
18 cooperate with the employer or carrier in applying for social
19 security benefits.

20 3. When an injured employee receives a full or partial
21 lump-sum advance of the employee's permanent total disability
22 compensation benefits, the employee's benefits under this
23 paragraph shall be computed on the employee's weekly
24 compensation rate as reduced by the lump-sum advance.

25 Section 6. Paragraph (a) of subsection (1) and
26 subsection (2) of section 440.151, Florida Statutes, are
27 amended to read:

28 440.151 Occupational diseases.--

29 (1)(a) Where the employer and employee are subject to
30 the provisions of the Workers' Compensation Law, the
31 disablement or death of an employee resulting from an

1 occupational disease as hereinafter defined shall be treated
2 as the happening of an injury by accident, notwithstanding any
3 other provisions of this chapter, and the employee or, in case
4 of death, the employee's dependents shall be entitled to
5 compensation as provided by this chapter, except as
6 hereinafter otherwise provided; and the practice and procedure
7 prescribed by this chapter shall apply to all proceedings
8 under this section, except as hereinafter otherwise provided.
9 Provided, however, that in no case shall an employer be liable
10 for compensation under the provisions of this section unless
11 such disease has resulted from the nature of the employment in
12 which the employee was engaged under such employer and was
13 actually contracted while so engaged, and the nature of the
14 employment was the major contributing cause of the disease.
15 Major contributing cause must be shown by medical evidence
16 only, as demonstrated by physical examination findings and
17 diagnostic testing. "Nature of the employment" means that in
18 the occupation in which the employee was so engaged there is
19 attached a particular hazard of such disease that
20 distinguishes it from the usual run of occupations, or the
21 incidence of such disease is substantially higher in the
22 occupation in which the employee was so engaged than in the
23 usual run of occupations. In claims for death under s. 440.16,
24 death must occur within 350 weeks after last exposure. Except
25 for cases involving a first responder, both causation and
26 sufficient exposure to a specific harmful substance shown to
27 be present in the workplace to support causation shall be
28 proven by clear and convincing evidence.

29 (2) Whenever used in this section the term
30 "occupational disease" shall be construed to mean only a
31 disease which is due to causes and conditions which are

1 characteristic of and peculiar to a particular trade,
2 occupation, process, or employment, and to exclude all
3 ordinary diseases of life to which the general public is
4 exposed, unless the incidence of the disease is substantially
5 higher in the particular trade, occupation, process, or
6 employment than for the general public. Except for cases
7 involving a first responder, "occupational disease" means only
8 a disease for which there are epidemiological studies showing
9 that exposure to the specific substance involved, at the
10 levels to which the employee was exposed, may cause the
11 precise disease sustained by the employee.

12 Section 7. Subsections (1) and (7) of section 440.34,
13 Florida Statutes, are amended to read:

14 440.34 Attorney's fees; costs.--

15 (1) A fee, gratuity, or other consideration may not be
16 paid for a claimant in connection with any proceedings arising
17 under this chapter, unless approved as reasonable by the judge
18 of compensation claims or court having jurisdiction over such
19 proceedings. Any attorney's fee approved by a judge of
20 compensation claims for benefits secured on behalf of a
21 claimant must equal to 20 percent of the first \$5,000 of the
22 amount of the benefits secured, 15 percent of the next \$5,000
23 of the amount of the benefits secured, 10 percent of the
24 remaining amount of the benefits secured to be provided during
25 the first 10 years after the date the claim is filed, and 5
26 percent of the benefits secured after 10 years. The judge of
27 compensation claims shall not approve a compensation order, a
28 joint stipulation for lump-sum settlement, a stipulation or
29 agreement between a claimant and his or her attorney, or any
30 other agreement related to benefits under this chapter that
31 provides for an attorney's fee in excess of the amount

1 | permitted by this section. The judge of compensation claims is
2 | not required to approve any retainer agreement between the
3 | claimant and his or her attorney. The retainer agreement as to
4 | fees and costs may not be for compensation in excess of the
5 | amount allowed under this section. However, for cases
6 | involving a first responder with an alleged exposure to toxic
7 | substances or occupational disease claim, the judge of
8 | compensation claims shall consider the following factors in
9 | each case and may increase or decrease the attorney's fee if,
10 | in his or her judgment, the circumstances of the particular
11 | case warrant such action:

12 | (a) The time and labor required, the novelty and
13 | difficulty of the questions involved, and the skill required
14 | to perform the legal service properly.

15 | (b) The fee customarily charged in the locality for
16 | similar legal services.

17 | (c) The amount involved in the controversy and the
18 | benefits payable to the claimant.

19 | (d) The time limitations imposed by the claimant or
20 | the circumstances.

21 | (e) The experience, reputation, and ability of the
22 | attorney or attorneys performing services.

23 | (f) The contingency or certainty of a fee.

24 | (7) Except for cases involving a first responder with
25 | an alleged exposure to toxic substances or occupational
26 | disease claim, if an attorney's fee is owed under paragraph
27 | (3)(a), the judge of compensation claims may approve an
28 | alternative attorney's fee not to exceed \$1,500 only once per
29 | accident, based on a maximum hourly rate of \$150 per hour, if
30 | the judge of compensation claims expressly finds that the
31 | attorney's fee amount provided for in subsection (1), based on

1 | benefits secured, fails to fairly compensate the attorney for
2 | disputed medical-only claims as provided in paragraph (3)(a)
3 | and the circumstances of the particular case warrant such
4 | action.

5 | Section 8. This act shall take effect upon becoming a
6 | law.

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