

By Senator Hill

1-1398-05

1 A bill to be entitled  
 2 An act relating to workers' compensation;  
 3 providing rights and remedies on behalf of  
 4 injured workers; providing for access to  
 5 physicians; prescribing procedures with respect  
 6 to workers' compensation proceedings; providing  
 7 that subpoenas be issued by judges of  
 8 compensation claims only; prescribing rights to  
 9 benefits, including compensation, training, and  
 10 employment; limiting employers and insurance  
 11 carriers in their activities in workers'  
 12 compensation cases; prescribing duties of the  
 13 Department of Financial Services with respect  
 14 to workers' compensation cases; prescribing  
 15 limits on the dissemination and discovery of  
 16 records, including medical records; amending s.  
 17 440.34, F.S.; reinstating former provisions  
 18 that provided procedures and remedies in cases  
 19 of bad-faith dealings; providing an effective  
 20 date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
23

24 Section 1. (1) An injured worker must be allowed  
 25 immediate access to necessary medical treatment and indemnity  
 26 benefits as promised in the exclusive remedy. If a carrier  
 27 fails to provide such access without convincing evidence that  
 28 the injured worker did not incur the injury at work or  
 29 conclusive evidence of an act of fraud, the injured worker  
 30 retains the right to file a civil lawsuit, outside the  
 31 workers' compensation system, against the carrier for

1 negligence and may recover any losses that result from denial  
2 of legitimate benefits, including, but not limited to,  
3 benefits guaranteed under the law, plus penalties and  
4 interest; equity in a home or vehicle; consideration of  
5 increased impairment as a result of failure to approve medical  
6 treatment; awards to compensate for loss of credit status;  
7 awards for psychological stress and related illness as a  
8 result of denial of benefits; and any other award the jury  
9 finds compensable. The employer or the carrier, or both, is  
10 responsible for paying all legal fees, both of the claimant  
11 and of the defense, if the claimant wins the civil suit.

12 (2) Injured workers may choose their own physicians  
13 from a statewide list of participating physicians who accept  
14 workers' compensation insurance, which list is compiled and  
15 maintained by the Department of Financial Services and  
16 contains the names of all such physicians in the state who  
17 accept new patients. Each injured worker shall choose a family  
18 physician to coordinate his or her treatment and referrals  
19 during his or her injury. A specialist of any kind may not be  
20 chosen as a family physician. Each carrier is entitled to one  
21 independent medical examination of its choice per specialty,  
22 as is the injured worker if the independent medical  
23 examination disputes the diagnosis and treatment plan of the  
24 treating physician. A carrier must follow the same fee  
25 schedule as the injured worker. A yearly assessment on  
26 impairment must be done by the injured worker's family  
27 physician and any other specialty physician relating to the  
28 on-the-job injury if the family physician feels that a  
29 referral is necessary to complete the assessment.

30 (3) A carrier cannot change an injured worker's  
31 physicians or refuse referrals without justification and the

1 approval of the injured worker. If a dispute arises on this  
2 issue, the judge of compensation claims shall grant a motion  
3 for a hearing within 5 working days after notification of the  
4 dispute, to fairly resolve the issue if it cannot be resolved  
5 by the Employee Assistance Office within 1 week after the  
6 issue has been referred to that office. The judge of  
7 compensation claims shall make an adjudication on this issue  
8 at the hearing or within 7 working days thereafter.

9 (4) There is no limitation on temporary benefits.  
10 Benefits shall stop at the date of maximum medical improvement  
11 regardless of the length of time required to get to maximum  
12 medical improvement unless the person is permanently and  
13 totally disabled. Before any benefits are stopped or the  
14 injured worker is placed on permanent total disability, he or  
15 she must be assessed at maximum medical improvement by all  
16 treating physicians and an impairment rating must be received  
17 by all treating physicians or from a specialist in every area  
18 of injury, or both. Treating physicians' opinions shall have  
19 the greatest weight in the case of any dispute. Maximum  
20 medical improvement may not always indicate that an injured  
21 worker can return to work. Any injured worker on medications  
22 that restrict him or her from driving or operating machinery  
23 will be compensated until a date when the treating physician  
24 decides it is safe for the injured worker to drive while  
25 medicated or the injured worker is taken off the medication.  
26 This includes any drug with a dosage such that the Florida  
27 Highway Patrol would consider a driver who drives while taking  
28 that dosage as intoxicated or driving under the influence and  
29 could lead to loss of driver's license if the injured worker  
30 is driving while impaired by the drug. If an injured worker is  
31 too impaired to drive while medicated, he or she is too

1 impaired to work. During this time, if the person is not  
2 permanently and totally disabled, he or she will be considered  
3 temporarily totally disabled and benefits must be paid.

4 (5) An employer or carrier may not dispute a case if  
5 it fails to do so in the 120-day period provided by law for  
6 investigation unless there is clear and convincing evidence of  
7 a significant change in the injured worker's impairment rating  
8 by his or her treating physician or clear and convincing  
9 evidence of fraud.

10 (6) The Department of Financial Services shall compile  
11 a list of physicians statewide who are willing to take  
12 out-of-state workers' compensation claims for residents who  
13 have moved to this state after injury in another state. The  
14 department shall help workers injured out of state secure  
15 their benefits from carriers in other states by working with  
16 the workers' compensation systems in the other states.

17 (7) An employer or carrier may not hire a private  
18 investigator to follow an injured worker after the 120-day  
19 period of investigation allowed by law unless there is clear  
20 and convincing evidence of fraud or change in the injured  
21 worker's impairment rating by the treating physician. After  
22 the 120-day period of investigation after the date of injury  
23 allowed by law for the carrier, the Florida Department of Law  
24 Enforcement must find some evidence providing a legitimate  
25 reason for a private investigator before approval can be  
26 obtained to hire a private investigator to follow the injured  
27 worker. An investigator may not follow, harass, or tape the  
28 injured worker's family members during an investigation.

29 (8) An employer or carrier is entitled to only those  
30 medical records of the injured worker which the treating  
31 family physician deems relevant to the on-the-job injury.

1 Preexisting conditions may not be considered as long as the  
2 injured worker was able to successfully perform his or her job  
3 at a satisfactory level and was able to meet attendance  
4 requirements by the employer at the time of the injury.

5 (9) Financial records of the injured worker's spouse  
6 are exempt from examination by the employer or carrier.

7 (10) The employer or carrier may only obtain form  
8 SSA-1099-SM and nothing else from the Social Security Office  
9 for discovery of a workers' compensation case unless the  
10 claimant plans to introduce other documentation into evidence  
11 from that agency in relation to the workers' compensation  
12 case. An employer or carrier may not voluntarily provide  
13 medical records to the Social Security Office but, upon  
14 request from the Social Security Office, may provide data  
15 requested. A copy of any material sent to the Social Security  
16 Office by the employer or carrier must be sent to the injured  
17 worker and his or her attorney, and the employer or carrier  
18 must secure a written release from the injured worker before  
19 any record may be released.

20 (12) A claimant's attorney's fees shall be no more or  
21 less restricted than those of the employer or carrier. Each  
22 has equal access to counsel, as provided for in the state and  
23 United States Constitutions.

24 (12) Every subpoena must be signed by a judge of  
25 compensation claims. An attorney for neither side has  
26 authority to issue subpoenas.

27 (13) All injured workers who are assessed as able to  
28 perform some kind of work shall have access to some form of a  
29 training program if they are unable to return to their  
30 original positions or find a job paying the same salary.

31

1           (14) An injured worker returning to employment and  
2 making less in salary and benefits than he or she was at the  
3 time of the injury shall be compensated by the employer or  
4 carrier for the difference in salary and benefits.

5           (15) Psychological injury or illness, or both, as a  
6 result of the injury or treatment, or both, while in the  
7 workers' compensation system shall be covered. Indemnity  
8 benefits and treatment shall be provided at the same rate as  
9 for any other injury.

10           (16) Chemical or toxic injury or illness shall be  
11 determined relevant to the injury by a physician and not the  
12 employer or carrier. Employer records shall be discoverable  
13 pertaining to the number of incidents similar to the toxic or  
14 chemical injury suspected. This also includes the  
15 manufacturers' safety data sheets provided from the  
16 manufacturer of any chemical or hazardous substance as well as  
17 any handling instructions and ingredients in any suspected  
18 chemical or hazardous substance.

19           (17) Employer records for all injuries shall be  
20 discoverable relating to job safety and unlawful termination  
21 of injured workers as well as any discrimination or prejudice  
22 suspected related to the on-the-job injury.

23           (18) Employers must adhere to temporary restrictions  
24 placed on the injured workers with no exceptions. If an  
25 employer fails to employ an injured worker with permanent  
26 restrictions, it is the employer's responsibility to pay for  
27 retraining, indemnity payments while retraining, and placement  
28 of that injured worker.

29           (19) The employer or carrier shall pay the injured  
30 worker indemnity benefits during his or her complete  
31 rehabilitation or retraining, or both, in addition to what the

1 injured worker receives from the state trust fund for  
2 schooling and books as long as an agent assessment from the  
3 Bureau of Reeducation and Rehabilitation Services approves the  
4 retraining as an option for the injured worker.

5 (20) The employer shall provide the injured worker and  
6 his or her family with health insurance benefits at the same  
7 cost that was normally taken out of the employee's paycheck  
8 for whatever insurance the employee had at the time of injury,  
9 as opposed to the total cost the employer pays monthly for  
10 such insurance.

11 (21) Medical benefits may not be settled out at any  
12 time.

13 (22) Supplemental benefits for permanent total  
14 disability shall continue until death. Permanent total  
15 benefits shall continue until death.

16 (23) The employer or carrier may not cut off benefits  
17 for those on permanent total disability before a hearing with  
18 the judge of compensation claims. The employer or carrier may  
19 not reopen a case years after the injury without clear and  
20 convincing evidence of fraud or a change in the medical status  
21 by the treating physician.

22 (24) Claimants' attorneys are not entitled to any  
23 money over and above the amount the judge of compensation  
24 claims determines to be fees and costs. Claimants' attorneys  
25 may not force injured workers to have the workers' regular  
26 checks come to the attorneys or charge a handling fee for  
27 claimant checks that come to the attorneys. Money may not be  
28 held out of an injured worker's check without his or her  
29 expressed written and contractual agreement.

30 (25) All workers' compensation adjusters must be  
31 certified yearly. Training courses for adjusters shall be set

1 up by the Department of Financial Services for all adjusters  
2 and must be taken yearly to obtain certification.

3 (26) An adjuster may not deny any treatment or  
4 prescription ordered by a treating physician without  
5 authorization from a physician on staff for the insurance  
6 company. If an adjuster denies treatment without authorization  
7 from a staff physician, then he or she as well as the  
8 insurance company is liable in a civil action if any damage or  
9 exacerbation of the injury results from the denial. An  
10 adjuster may not practice medicine without a license.

11 (27) Overpayments of indemnity or supplemental  
12 benefits, or both, as a result of a miscalculation by the  
13 carrier may not be repaid by the injured worker. If there is  
14 an overpayment, the carrier may adjust the injured worker's  
15 pay accordingly but may not recoup the loss that results from  
16 its own error. Any reduction in pay or benefits must be  
17 approved by the Department of Financial Services before the  
18 reduction can be made.

19 (28) Once an injured worker reports additional income,  
20 such as social security disability or supplemental security  
21 income or any other payment required to be reported to the  
22 carrier which allows the carrier an offset, the offset must be  
23 calculated upon receipt of the notification. If the carrier  
24 fails to assess the offset, the injured worker is not required  
25 to repay any amount of overpayment received as a result of the  
26 carrier's failure to correctly figure that offset in a speedy  
27 fashion.

28 (29) A person conducting a peer review of physicians  
29 or treatments must speak with all treating physicians before  
30 making a decision from the peer review board. Those on the  
31 board also must review all medical records provided by the



1 injured worker, the injured worker's attorney, and the  
2 employer or carrier and the employer's or carrier's attorney,  
3 if any. The board also must have a telephone conference with  
4 the injured worker before it makes any findings. All members  
5 of the board must be present during any conversation with the  
6 injured worker and his or her treating physicians.

7 (30) A clause may not be either contained in or added  
8 to a settlement agreement which requires an injured worker to  
9 resign his or her position as part of that agreement.

10 (31) A health care provider may not bill a claimant  
11 for a workers' compensation injury, but must collect the money  
12 from the employer or carrier. The judges of compensation  
13 claims have jurisdiction to issue a stay in any attempt to  
14 obtain payment of a bill that is in dispute until the dispute  
15 is resolved or a bill that is unquestionably workers'  
16 compensation. An attempt to collect a bill either by the  
17 provider or a collection agency before the issue is resolved  
18 is unlawful and may result in fines or criminal charges, or  
19 both, against the provider.

20 (32) When the carrier is providing records to any  
21 party, physician, attorney, the Department of Financial  
22 Services, or any other agency, it must provide all current  
23 medical records and information. A copy of these records,  
24 along with any communication with these parties, must be sent  
25 to the injured worker and to his or her attorney before these  
26 records may be sent and before any independent medical  
27 examination or referral physician's appointment may be set.

28 (33) The carrier, the carrier's attorney, and the  
29 adjuster may not give their personal opinion in an effort to  
30 influence the physician in any way. None of them may suggest  
31 anything to the physician that may affect the outcome of the

1 appointment. The physician shall make his or her opinion known  
2 based on the medical records and interview with the injured  
3 worker.

4 Section 2. Subsection (3) of section 440.34, Florida  
5 Statutes, is amended to read:

6 440.34 Attorney's fees; costs.--

7 (3) If any party should prevail in any proceedings  
8 before a judge of compensation claims or court, there shall be  
9 taxed against the nonprevailing party the reasonable costs of  
10 such proceedings, not to include attorney's fees. A claimant  
11 shall be responsible for the payment of her or his own  
12 attorney's fees, except that a claimant shall be entitled to  
13 recover a reasonable attorney's fee from a carrier or  
14 employer:

15 (a) Against whom she or he successfully asserts a  
16 petition for medical benefits only, if the claimant has not  
17 filed or is not entitled to file at such time a claim for  
18 disability, permanent impairment, wage-loss, or death  
19 benefits, arising out of the same accident;

20 (b) In cases in which the judge of compensation claims  
21 issues an order finding that a carrier has acted in bad faith  
22 with regard to handling an injured worker's claim and the  
23 injured worker has suffered economic loss. For the purposes of  
24 this paragraph, the term "bad faith" means conduct by the  
25 carrier in the handling of a claim which amounts to fraud;  
26 malice; oppression; or willful, wanton, or reckless disregard  
27 of the rights of the claimant. Any determination of bad faith  
28 shall be made by the judge of compensation claims through a  
29 separate factfinding proceeding. The judge of compensation  
30 claims shall issue a separate order that shall expressly state  
31 the specific findings of fact upon which the determination of

1 ~~bad faith is based In any case in which the employer or~~  
2 ~~carrier files a response to petition denying benefits with the~~  
3 ~~Office of the Judges of Compensation Claims and the injured~~  
4 ~~person has employed an attorney in the successful prosecution~~  
5 ~~of the petition;~~

6 (c) In a proceeding in which a carrier or employer  
7 denies that an accident occurred for which compensation  
8 benefits are payable, and the claimant prevails on the issue  
9 of compensability; or

10 (d) In cases where the claimant successfully prevails  
11 in proceedings filed under s. 440.24 or s. 440.28.

12  
13 Regardless of the date benefits were initially requested,  
14 attorney's fees shall not attach under this subsection until  
15 30 days after the date the carrier or employer, if  
16 self-insured, receives the petition.

17 Section 3. This act shall take effect July 1, 2005.

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20 SENATE SUMMARY

21 Revises or creates a broad variety of provisions relating  
22 to workers' compensation. (See bill for details.)  
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