

1                   A bill to be entitled  
2           An act relating to workers' compensation for first  
3           responders; amending s. 440.02, F.S.; revising and  
4           providing definitions; amending s. 440.09, F.S.; revising  
5           provisions relating to compensation for occupational  
6           diseases and repetitive exposure to provide an exception  
7           for first responders; amending s. 440.091, F.S.; providing  
8           that certain conditions relating to smallpox vaccinations  
9           are an injury by accident arising out of the employment  
10          for purposes of ch. 440, F.S.; amending s. 440.093, F.S.;  
11          providing conditions for compensation for first responders  
12          for cases involving mental or nervous injuries; providing  
13          additional conditions for payment of indemnity benefits  
14          under ch. 440, F.S.; providing an exception with regard to  
15          determination of mental and nervous injuries; amending s.  
16          440.15, F.S.; providing an additional exception with  
17          regard to compensation for permanent total disability;  
18          amending s. 440.151, F.S.; providing an exception with  
19          regard to compensation for occupational diseases; amending  
20          s. 440.34, F.S.; providing factors to be considered by a  
21          judge of compensation claims in awarding attorney's fees  
22          and costs in cases involving first responders; providing  
23          an effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:  
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27 Section 1. Subsection (1) of section 440.02, Florida  
28 Statutes, is amended, and subsection (42) is added to said  
29 section, to read:

30 440.02 Definitions.--When used in this chapter, unless the  
31 context clearly requires otherwise, the following terms shall  
32 have the following meanings:

33 (1) "Accident" means only an unexpected or unusual event  
34 or result that happens suddenly. Disability or death due to the  
35 accidental acceleration or aggravation of a venereal disease or  
36 of a disease due to the habitual use of alcohol or controlled  
37 substances or narcotic drugs, or a disease that manifests itself  
38 in the fear of or dislike for an individual because of the  
39 individual's race, color, religion, sex, national origin, age,  
40 or handicap is not an injury by accident arising out of the  
41 employment. Subject to s. 440.15(5), if a preexisting disease or  
42 anomaly is accelerated or aggravated by an accident arising out  
43 of and in the course of employment, only acceleration of death  
44 or acceleration or aggravation of the preexisting condition  
45 reasonably attributable to the accident is compensable, with  
46 respect to any compensation otherwise payable under this  
47 chapter. Except for cases involving a first responder, an injury  
48 or disease caused by exposure to a toxic substance, including,  
49 but not limited to, fungus or mold, is not an injury by accident  
50 arising out of the employment unless there is clear and  
51 convincing evidence establishing that exposure to the specific  
52 substance involved, at the levels to which the employee was  
53 exposed, can cause the injury or disease sustained by the  
54 employee.

55           (42) "First responder" means a law enforcement officer as  
 56 defined in s. 943.10, a firefighter as defined in s. 633.30, and  
 57 an emergency medical technician or a paramedic as defined in s.  
 58 401.23 employed by state or local government. A volunteer  
 59 firefighter engaged by state or local government is also  
 60 considered a first responder for purposes of this chapter.

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

63           440.09 Coverage.--

64           (1) The employer must pay compensation or furnish benefits  
 65 required by this chapter if the employee suffers an accidental  
 66 compensable injury or death arising out of work performed in the  
 67 course and the scope of employment. The injury, its occupational  
 68 cause, and any resulting manifestations or disability must be  
 69 established to a reasonable degree of medical certainty, based  
 70 on objective relevant medical findings, and the accidental  
 71 compensable injury must be the major contributing cause of any  
 72 resulting injuries. For purposes of this section, "major  
 73 contributing cause" means the cause which is more than 50  
 74 percent responsible for the injury as compared to all other  
 75 causes combined for which treatment or benefits are sought.  
 76 Except for cases involving a first responder, in cases involving  
 77 occupational disease or repetitive exposure, both causation and  
 78 sufficient exposure to support causation must be proven by clear  
 79 and convincing evidence. Pain or other subjective complaints  
 80 alone, in the absence of objective relevant medical findings,  
 81 are not compensable. For purposes of this section, "objective  
 82 relevant medical findings" are those objective findings that

83 correlate to the subjective complaints of the injured employee  
84 and are confirmed by physical examination findings or diagnostic  
85 testing. Establishment of the causal relationship between a  
86 compensable accident and injuries for conditions that are not  
87 readily observable must be by medical evidence only, as  
88 demonstrated by physical examination findings or diagnostic  
89 testing. Major contributing cause must be demonstrated by  
90 medical evidence only.

91 (a) This chapter does not require any compensation or  
92 benefits for any subsequent injury the employee suffers as a  
93 result of an original injury arising out of and in the course of  
94 employment unless the original injury is the major contributing  
95 cause of the subsequent injury. Major contributing cause must be  
96 demonstrated by medical evidence only.

97 (b) If an injury arising out of and in the course of  
98 employment combines with a preexisting disease or condition to  
99 cause or prolong disability or need for treatment, the employer  
100 must pay compensation or benefits required by this chapter only  
101 to the extent that the injury arising out of and in the course  
102 of employment is and remains more than 50 percent responsible  
103 for the injury as compared to all other causes combined and  
104 thereafter remains the major contributing cause of the  
105 disability or need for treatment. Major contributing cause must  
106 be demonstrated by medical evidence only.

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

111 the hernia.

112 (d) If an accident happens while the employee is employed  
 113 elsewhere than in this state, which would entitle the employee  
 114 or his or her dependents to compensation if it had happened in  
 115 this state, the employee or his or her dependents are entitled  
 116 to compensation if the contract of employment was made in this  
 117 state, or the employment was principally localized in this  
 118 state. However, if an employee receives compensation or damages  
 119 under the laws of any other state, the total compensation for  
 120 the injury may not be greater than is provided in this chapter.

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

123 440.091 Law enforcement officer, firefighter, emergency  
 124 medical technician, or paramedic; when acting within the course  
 125 of employment.--

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

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

132 440.093 Mental and nervous injuries.--

133 (1) A mental or nervous injury due to stress, fright, or  
 134 excitement only is not an injury by accident arising out of the  
 135 employment. Except for cases involving a first responder,  
 136 nothing in this section shall be construed to allow for the  
 137 payment of benefits under this chapter for mental or nervous  
 138 injuries without an accompanying physical injury requiring

139 medical treatment. A physical injury resulting from mental or  
140 nervous injuries unaccompanied by physical trauma requiring  
141 medical treatment shall not be compensable under this chapter,  
142 unless the physical injury is to a first responder. For cases  
143 involving a first responder, payment of medical benefits under  
144 this chapter for mental or nervous injuries shall be made even  
145 if the first responder's mental or nervous injury is  
146 unaccompanied by a physical injury. However, for cases involving  
147 a first responder, payment of indemnity benefits under this  
148 chapter for mental and nervous injuries shall not be made unless  
149 a physical injury accompanies the mental or nervous injury.

150 (2) Except for cases involving a first responder, mental  
151 or nervous injuries occurring as a manifestation of an injury  
152 compensable under this chapter shall be demonstrated by clear  
153 and convincing medical evidence by a licensed psychiatrist  
154 meeting criteria established in the most recent edition of the  
155 diagnostic and statistical manual of mental disorders published  
156 by the American Psychiatric Association. The compensable  
157 physical injury must be and remain the major contributing cause  
158 of the mental or nervous condition and the compensable physical  
159 injury as determined by reasonable medical certainty must be at  
160 least 50 percent responsible for the mental or nervous condition  
161 as compared to all other contributing causes combined.  
162 Compensation is not payable for the mental, psychological, or  
163 emotional injury arising out of depression from being out of  
164 work or losing employment opportunities, resulting from a  
165 preexisting mental, psychological, or emotional condition or due

166 to pain or other subjective complaints that cannot be  
 167 substantiated by objective, relevant medical findings.

168 Section 5. Paragraph (f) of subsection (1) of section  
 169 440.15, Florida Statutes, is amended to read:

170 440.15 Compensation for disability.--Compensation for  
 171 disability shall be paid to the employee, subject to the limits  
 172 provided in s. 440.12(2), as follows:

173 (1) PERMANENT TOTAL DISABILITY.--

174 (f)1. If permanent total disability results from injuries  
 175 that occurred subsequent to June 30, 1955, and for which the  
 176 liability of the employer for compensation has not been  
 177 discharged under s. 440.20(11), the injured employee shall  
 178 receive additional weekly compensation benefits equal to 3  
 179 percent of her or his weekly compensation rate, as established  
 180 pursuant to the law in effect on the date of her or his injury,  
 181 multiplied by the number of calendar years since the date of  
 182 injury. The weekly compensation payable and the additional  
 183 benefits payable under this paragraph, when combined, may not  
 184 exceed the maximum weekly compensation rate in effect at the  
 185 time of payment as determined pursuant to s. 440.12(2). These  
 186 supplemental payments shall not be paid or payable after the  
 187 employee attains age 62, regardless of whether the employee has  
 188 applied for or is eligible to apply for social security benefits  
 189 under 42 U.S.C. s. 402 or s. 423, unless the employee is not  
 190 eligible for social security benefits under 42 U.S.C. s. 402 or  
 191 s. 423 either because the employee's compensable injury has  
 192 prevented the employee from working sufficient quarters to be  
 193 eligible for such benefits or, in cases involving a first

194 responder, the employer does not participate in the social  
195 security program. These supplemental benefits shall be paid by  
196 the department out of the Workers' Compensation Administration  
197 Trust Fund when the injury occurred subsequent to June 30, 1955,  
198 and before July 1, 1984. These supplemental benefits shall be  
199 paid by the employer when the injury occurred on or after July  
200 1, 1984. Supplemental benefits are not payable for any period  
201 prior to October 1, 1974.

202 2.a. The department shall provide by rule for the periodic  
203 reporting to the department of all earnings of any nature and  
204 social security income by the injured employee entitled to or  
205 claiming additional compensation under subparagraph 1. Neither  
206 the department nor the employer or carrier shall make any  
207 payment of those additional benefits provided by subparagraph 1.  
208 for any period during which the employee willfully fails or  
209 refuses to report upon request by the department in the manner  
210 prescribed by such rules.

211 b. The department shall provide by rule for the periodic  
212 reporting to the employer or carrier of all earnings of any  
213 nature and social security income by the injured employee  
214 entitled to or claiming benefits for permanent total disability.  
215 The employer or carrier is not required to make any payment of  
216 benefits for permanent total disability for any period during  
217 which the employee willfully fails or refuses to report upon  
218 request by the employer or carrier in the manner prescribed by  
219 such rules or if any employee who is receiving permanent total  
220 disability benefits refuses to apply for or cooperate with the  
221 employer or carrier in applying for social security benefits.



222           3. When an injured employee receives a full or partial  
 223 lump-sum advance of the employee's permanent total disability  
 224 compensation benefits, the employee's benefits under this  
 225 paragraph shall be computed on the employee's weekly  
 226 compensation rate as reduced by the lump-sum advance.

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

229           440.151 Occupational diseases.--

230           (1)(a) Where the employer and employee are subject to the  
 231 provisions of the Workers' Compensation Law, the disablement or  
 232 death of an employee resulting from an occupational disease as  
 233 hereinafter defined shall be treated as the happening of an  
 234 injury by accident, notwithstanding any other provisions of this  
 235 chapter, and the employee or, in case of death, the employee's  
 236 dependents shall be entitled to compensation as provided by this  
 237 chapter, except as hereinafter otherwise provided; and the  
 238 practice and procedure prescribed by this chapter shall apply to  
 239 all proceedings under this section, except as hereinafter  
 240 otherwise provided. Provided, however, that in no case shall an  
 241 employer be liable for compensation under the provisions of this  
 242 section unless such disease has resulted from the nature of the  
 243 employment in which the employee was engaged under such employer  
 244 and~~7~~ was actually contracted while so engaged~~7~~ and the nature of  
 245 the employment was the major contributing cause of the disease.  
 246 Major contributing cause must be shown by medical evidence only,  
 247 as demonstrated by physical examination findings and diagnostic  
 248 testing. "Nature of the employment" means that in the occupation  
 249 in which the employee was so engaged there is attached a

250 particular hazard of such disease that distinguishes it from the  
 251 usual run of occupations, or the incidence of such disease is  
 252 substantially higher in the occupation in which the employee was  
 253 so engaged than in the usual run of occupations. In claims for  
 254 death under s. 440.16, death must occur within 350 weeks after  
 255 last exposure. Except for cases involving a first responder,  
 256 both causation and sufficient exposure to a specific harmful  
 257 substance shown to be present in the workplace to support  
 258 causation shall be proven by clear and convincing evidence.

259 (2) Whenever used in this section the term "occupational  
 260 disease" shall be construed to mean only a disease which is due  
 261 to causes and conditions which are characteristic of and  
 262 peculiar to a particular trade, occupation, process, or  
 263 employment, and to exclude all ordinary diseases of life to  
 264 which the general public is exposed, unless the incidence of the  
 265 disease is substantially higher in the particular trade,  
 266 occupation, process, or employment than for the general public.  
 267 Except for cases involving a first responder, "occupational  
 268 disease" means only a disease for which there are  
 269 epidemiological studies showing that exposure to the specific  
 270 substance involved, at the levels to which the employee was  
 271 exposed, may cause the precise disease sustained by the  
 272 employee.

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

275 440.34 Attorney's fees; costs.--

276 (1) A fee, gratuity, or other consideration may not be  
 277 paid for a claimant in connection with any proceedings arising

278 | under this chapter, unless approved as reasonable by the judge  
 279 | of compensation claims or court having jurisdiction over such  
 280 | proceedings. Any attorney's fee approved by a judge of  
 281 | compensation claims for benefits secured on behalf of a claimant  
 282 | must equal to 20 percent of the first \$5,000 of the amount of  
 283 | the benefits secured, 15 percent of the next \$5,000 of the  
 284 | amount of the benefits secured, 10 percent of the remaining  
 285 | amount of the benefits secured to be provided during the first  
 286 | 10 years after the date the claim is filed, and 5 percent of the  
 287 | benefits secured after 10 years. The judge of compensation  
 288 | claims shall not approve a compensation order, a joint  
 289 | stipulation for lump-sum settlement, a stipulation or agreement  
 290 | between a claimant and his or her attorney, or any other  
 291 | agreement related to benefits under this chapter that provides  
 292 | for an attorney's fee in excess of the amount permitted by this  
 293 | section. The judge of compensation claims is not required to  
 294 | approve any retainer agreement between the claimant and his or  
 295 | her attorney. The retainer agreement as to fees and costs may  
 296 | not be for compensation in excess of the amount allowed under  
 297 | this section. However, for cases involving a first responder  
 298 | with an alleged exposure to toxic substances or occupational  
 299 | disease claim, the judge of compensation claims shall consider  
 300 | the following factors in each case and may increase or decrease  
 301 | the attorney's fee if, in his or her judgment, the circumstances  
 302 | of the particular case warrant such action:  
 303 |       (a) The time and labor required, the novelty and  
 304 | difficulty of the questions involved, and the skill required to  
 305 | perform the legal service properly.

306           (b) The fee customarily charged in the locality for  
 307 similar legal services.

308           (c) The amount involved in the controversy and the  
 309 benefits payable to the claimant.

310           (d) The time limitations imposed by the claimant or the  
 311 circumstances.

312           (e) The experience, reputation, and ability of the  
 313 attorney or attorneys performing services.

314           (f) The contingency or certainty of a fee.

315           (7) Except for cases involving a first responder with an  
 316 alleged exposure to toxic substances or occupational disease  
 317 claim, if an attorney's fee is owed under paragraph (3)(a), the  
 318 judge of compensation claims may approve an alternative  
 319 attorney's fee not to exceed \$1,500 only once per accident,  
 320 based on a maximum hourly rate of \$150 per hour, if the judge of  
 321 compensation claims expressly finds that the attorney's fee  
 322 amount provided for in subsection (1), based on benefits  
 323 secured, fails to fairly compensate the attorney for disputed  
 324 medical-only claims as provided in paragraph (3)(a) and the  
 325 circumstances of the particular case warrant such action.

326           Section 8. This act shall take effect upon becoming a law.