

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1286
 INTRODUCER: Senator Bennett
 SUBJECT: State Reciprocity in Workers' Compensation Claims
 DATE: March 18, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill creates a process designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, provided that state has a reciprocal provision similar to Florida's.

This bill substantially amends the following sections of the Florida Statutes: 440.09.

II. Present Situation:

Generally

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. Workers' compensation insurance was established to address cost of lawsuits filed by employees against employers for work-related injuries. Through the Florida workers' compensation law, employers must provide medical benefits and indemnity (wage replacement) benefits to their employees who are injured in the course of their employment.

Florida Workers' Compensation Law

In Florida, the worker's compensation process is governed by ch. 440, F.S., titled the "Workers' Compensation Law." Section 440.015, F.S., expresses the legislative intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful

reemployment at a reasonable cost to the employer.” Further, the Legislature expressed the intent that:

It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department (Department of Financial Services), agency (Agency for Health Care Administration), the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers’ Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.¹

Chapter 440, F.S., provides a detailed framework for coverage and benefit issues,² as well as the process for resolving disputes,³ all of which are specific to Florida and may have substantially different provisions than in other states.

The Florida laws provide predictability for employees, employers and workers’ compensation insurance carriers. A greater degree of predictability helps the National Council of Compensation Insurance (NCCI), the rating organization that files annual worker’s compensation rates in Florida, to more accurately evaluate the risks being covered and to seek the appropriate premium levels. Further, a greater degree of predictability helps the Office of Insurance Regulation (OIR) to evaluate the annual rate filing and establish the most appropriate premium levels for Florida businesses.

Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers’ compensation laws of other states, particularly California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

Currently, s. 440.09(1)(d), F.S., provides that if a Florida employee is injured while employed elsewhere than in Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in ch. 440, F.S.

¹ Id.

² See, e.g., s. 440.09, F.S. (coverage requirements), s. 440.102, F.S. (drug free workplace provisions), s. 440.106, F.S. (civil remedies), s. 440.15 F.S. (permanent total disability, temporary total disability, permanent impairment benefits, temporary partial disability, and subsequent injury), s. 440.151, F.S. (occupational diseases), and s. 440.16, F.S. (compensation for death).

³ See, e.g., s. 440.021, F.S. (exemption from Administrative Procedure Act), s. 440.011, F.S. (exclusiveness of liability), s. 440.192, F.S. (dispute resolution procedures), s. 440.1926, F.S. (alternate dispute resolution procedures), s. 440.25, F.S. (procedures for mediation and hearings), s. 440.271, F.S. (appeal rights), and s. 440.29, F.S. (procedures before a judge of compensation claims).

III. Effect of Proposed Changes:

The bill creates a process designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, if that state has a reciprocal provision similar to Florida's. To accomplish this purpose, the bill would:

- Provide that if a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- Provide that if an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- The Division of Workers' Compensation is authorized to enter into an agreement with the workers' compensation agency of any other state on matters relating to: (1) conflicts of jurisdiction where the employment in one state with the injury in another; or (2) there is a dispute as to the boundaries or jurisdiction of the states. Any such agreement would determine the rights of Florida employees injured in the other state to the agreement, and for employees of the other state injured in Florida.
- When an employee has a claim under workers' compensation in another jurisdiction for the same injury or occupational disease as a claim filed in Florida, the total amount of compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation laws.
- An employee is considered to be temporarily working in another state, if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.

The bill has an effective date of July 11, 2011.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill authorizes the Division of Workers' Compensation of the Department of Financial Services to enter into an agreement with the workers' compensation agency of any other state on conflicts of jurisdiction or boundaries. The bill provides that any such agreement would determine the rights of Florida employees injured in the other state that is party to the agreement, and the rights for employees of the other state injured in Florida. This authorization may raise issues of the proper delegation of authority.

Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida." The Florida Supreme Court has held that this constitutional provision requires application of a "strict separation of powers doctrine...which `encompasses two fundamental prohibitions.'" Fla. Dep't of State, Div. of Elections v. Martin, 916 So.2d 763, 769 (Fla. 2005) (quoting State v. Cotton, 769 So.2d 345, 353 (Fla.2000), and Chiles, 589 So.2d at 264). No branch of Government may delegate its constitutionally assigned powers to another branch. Chiles, 589 So.2d at 264.

The legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions." Microtel v. Fla. Pub. Serv. Comm'n, 464 So.2d 1189, 1191 (Fla.1985) (citing State, Dep't of Citrus v. Griffin, 239 So.2d 577 (Fla.1970)). However, the legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law." Sims v. State, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers "absent ascertainable minimal standards and guidelines." Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones, 474 So.2d 359, 361 (Fla. 1st DCA 1985). When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide ... in the execution of the powers delegated." Martin, 916 So.2d at 770.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

By establishing a process to ensure that a single jurisdiction will apply in cases involving employees injured in a state other than where they are employed, the legislation should reduce the ability of an injured employee to choose the jurisdiction with the more generous benefits. As a result, workers' compensation premiums and potential litigation costs ultimately should be lower for those businesses that employ significant numbers of employees who temporarily travel to other states as part of their employment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.