

**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 1094

INTRODUCER: Senator Hays

SUBJECT: Revising Workers' Compensation Penalties

DATE: January 12, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Favorable</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Department of Financial Services (Department) Division of Workers' Compensation enforces employers' compliance in procuring workers' compensation as required in Ch. 440, F.S. The Department may issue stop-work orders, injunctions, and penalties against non-complying employers. In addition, the Department currently assesses a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding 3 years or \$1,000, whichever is greater. Under the bill, the Department would assess a penalty equal to 2 times the amount the employer would have paid in premium within the preceding year or \$1,000, whichever is greater.

This bill substantially amends the following section of the Florida Statutes: 440.107.

**II. Present Situation:**

Employers within Florida are required to obtain workers' compensation coverage that meets the requirements of Ch. 440, F.S., and the Florida Insurance Code. The Department is responsible for investigating and enforcing compliance with workers' compensation coverage requirements and may assess stop-work orders, injunctions, and penalties against the non-complying employers. If an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor the employer is deemed to have failed to secure payment for workers' compensation.<sup>1</sup> When the Department determines that an employer has failed to secure the required payment of workers' compensation, a stop-work order is issued

<sup>1</sup> Section 440.107(2), F.S.

within 72 hours ceasing all business operations and remains in effect until a finding that the employer has come into compliance with coverage requirements and paid any penalties.<sup>2</sup> A conditional release from the stop-work order may be issued by the Department to employers who have come into compliance with the workers' compensation coverage requirements and have agreed to pay any penalties through a payment agreement schedule with the Department.

In addition to stop-work orders, injunctions, or penalties, the Department is required to assess against employers who have failed to secure payment of workers' compensation a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding 3 year period or \$1,000, whichever is greater.<sup>3</sup> In determining the amount of the penalty, the Department multiplies 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation within the preceding 3 year period.

### **III. Effect of Proposed Changes:**

The bill would change the calculation of the required penalty the Department must assess against employers who fail to secure payment of workers' compensation as required. The bill would increase the penalty multiplier to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation. The bill will also reduce the time to determine periods of non-compliance from the preceding 3 year period to a 1 year period. The Department will either assess the calculated penalty or \$1,000, whichever is greater.

Reducing the non-compliance period from 3 years to 1 year will streamline the Department's penalty calculation process due to the decrease in the volume of business records that must be reviewed and analyzed.<sup>4</sup> The streamlined process will allow the Department to provide employers a determination of their penalty amounts more quickly and enable employers to pay the penalties sooner.

The bill would take effect on July 1, 2012.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>2</sup> Section 440.107(7)(a), F.S.

<sup>3</sup> Section 440.107(7)(d)(1), F.S.

<sup>4</sup> Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

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

None.

**B. Private Sector Impact:**

By reducing the non-compliance period to 1 year, the bill would decrease the business and payroll records retrieval and production duties currently imposed on employers. The streamlined penalty calculation and quicker penalty determination will enable employers to pay their penalties sooner and therefore return to work more quickly.<sup>5</sup>

**C. Government Sector Impact:**

The amount of penalties collected and deposited in the Workers' Compensation Administration Trust Fund (Fund) are affected by the penalty amount, the employer's ability to pay the penalty, whether the employer elects to pay the penalty in full or enters into a periodic payment plan with the Department, and the general economic environment.<sup>6</sup> Therefore the financial impact on the Fund is indeterminate.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>5</sup> Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

<sup>6</sup> Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.