

**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 Committee on Governmental Oversight and Accountability

**BILL:** CS/SB 860

**INTRODUCER:** Banking and Insurance Committee and Senator Galvano

**SUBJECT:** Workers' Compensation System Administration

**DATE:** April 15, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	McKay	McVaney	GO	Pre-meeting
3.			JU	
4.			AP	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 860 amends provisions relating to the administration of Florida's workers' compensation system. The bill makes the following changes:

- Provides that stop-work orders and penalties assessed against a limited liability company (LLC) continue in force against successor companies of the LLC to the same extent (and under the same conditions) that they remain in force against successor companies of corporations, partnerships, and sole proprietorships.
- Eliminates the requirement that workers' compensation health care providers be certified by the Department of Financial Services (DFS).
- Provides additional time for health care providers, carriers, and employers to file medical reimbursement disputes with the DFS, for carriers to respond to petitions, and for the DFS to issue a written determination.
- Eliminates the following requirements: (1) that the DFS approve the advance payment of workers' compensation benefits in certain circumstances; (2) that carriers submit reemployment status reports to the DFS for review; (3) that a vocational evaluation always be conducted prior to the DFS authorizing training and education for an injured employee; and (4) that the DFS serve as custodian of certain collective bargaining agreements.

This bill substantially amends the following sections of the Florida Statutes: 284.44, 440.02, 440.05, 440.102, 440.107, 440.11, 440.13, 440.15, 440.185, 440.20, 440.211, 440.385, and 440.491.

## II. Present Situation:

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment.

### *Coverage Requirements*

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.<sup>1</sup> In Florida, any contractor or subcontractor who engages in construction in the state must secure and maintain workers' compensation insurance.<sup>2</sup> No more than three officers of a corporation or members of a limited liability company, who are engaged in the construction industry, may elect to be exempt from this requirement, if certain conditions are met.<sup>3</sup> Corporate officers and members of a non-construction LLC who own at least 10 percent of a LLC can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not entitled to workers compensation benefits if they suffer a workplace injury.

In 2012, the Legislature enacted changes<sup>4</sup> relating to the application process for the workers' compensation exemption. Electronic filing of exemption applications was required. As a result, applicants no longer needed to provide their social security number, but are required to include their date of birth, Florida driver license number, or Florida identification card number<sup>5</sup> on their application. An unintended consequence of the amended data reporting requirements was to preclude out-of-state corporate officers, who would otherwise have been eligible for an exemption, from filing an electronic application, as they could not possess a Florida driver license or Florida identification card. Current practice at the DFS is to accept paper applications from out-of-state applicants and issue exemptions when all other eligibility criteria are met.

If an employer fails to comply with coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of knowledge of the non-compliance. SWOs require the employer

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<sup>1</sup> Sections 440.38, F.S.

<sup>2</sup> Sections 440.10 and 440.38, F.S.

<sup>3</sup> Section 440.02, F.S.

<sup>4</sup> Chapter 2012-213, L.O.F.

<sup>5</sup> The Florida Department of Highway Safety and Motor Vehicles issues non-driver identification cards to State residents above 12 years of age who do not have a valid ID card, driver license or instruction permit from the State or any other jurisdiction. See <http://www.dmv.com/fl/florida/apply-id-card>.

to cease business operations, and remain in effect until the DFS issues an Order Releasing the Stop-Work Order. Additionally, employers are assessed penalties equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or \$1,000, whichever is greater.<sup>6</sup> SWOs are issued for the following violations: failure to obtain workers' compensation insurance; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records in a timely manner.

To prevent a person or business from circumventing these sanctions, s. 440.107, F.S., provides that a SWO and associated penalties continue in force against a successor entity of a corporation, partnership, or sole proprietorship if certain conditions are met. The application of the sanctions would apply to the successor entity if it were engaged in the same or equivalent trade or activity as the business that was issued the SWO and has one or more of the same principals or officers as the business that was issued the SWO. The workers' compensation law is silent as to whether SWOs and associated penalties continue in force against successor entities of limited liability companies (LLCs).<sup>7</sup>

### **Certified Health Care Providers and Reimbursement Disputes**

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the DFS or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS, or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

The DFS is responsible for resolving medical reimbursement disputes between health care providers and insurance carriers. Providers have 30 days from receipt of notice of disallowance or adjustment of payment from a carrier to file a dispute petition with the DFS. Carriers have 10 days from receipt of the provider's petition to submit to the DFS all documentation substantiating the carrier's disallowance or adjustment; otherwise, they waive all objections to the petition. The DFS has 60 days from receipt of all documentation to issue a written determination. The provider or the workers' compensation carrier, or either party's designated representative, may contest the DFS's determination by filing a request for an administrative hearing under ch. 120, F.S.

### **Workers' Compensation Indemnity Benefits**

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least 8 days of work due to a covered (compensable) injury. However, indemnity benefits are

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<sup>6</sup> Section 440.107, F.S.

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

payable retroactively from the first day of disability (to include compensation for the first 7 days missed) to employees who miss more than 21 days of work due to a compensable injury.<sup>8</sup> Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage, up to the maximum weekly benefit established by law<sup>9</sup> (\$816 per week<sup>10</sup> in 2013). Indemnity benefits are generally payable for a maximum of 104 weeks, with specified exceptions.<sup>11</sup>

For catastrophic temporary total disability,<sup>12</sup> the workers' compensation law provides for increased indemnity benefits (80 percent of the employee's average weekly wage) for up to 6 months from the date of injury. Section 440.15(2)(b), F.S., limits such increased benefit to a maximum of \$700 per week. As noted in the preceding paragraph, the maximum workers' compensation rate in Florida's workers' compensation system was greater than \$700 for 2013. Accordingly, employees could actually receive less compensation for a catastrophic temporary total disability than they would for a non-catastrophic injury.<sup>13</sup>

Section 440.20(12), F.S., permits Judges of Compensation Claims or, under certain conditions, the DFS to approve the advance payment of workers' compensation benefits to injured employees. In cases in which the carrier and employer have stipulated to an advance payment in excess of \$2,000, DFS approval of the advance payment is required.

### **Carrier Performance Standards**

Carriers are required to pay the first installment of compensation for total disability (temporary total disability or temporary partial disability) or death benefits or deny the claim within 14 days after the employer receives notification of the injury or death, when disability is immediate and continuous for 8 or more days after the injury.<sup>14</sup> Medical, dental, pharmacy, and hospital bills properly submitted to the insurer must be paid within 45 calendar days after receipt.<sup>15</sup> The DFS ensures compliance through electronic databases and carrier audits, and imposes administrative penalties against carriers that do not achieve a minimum 95 percent performance standard<sup>16</sup> as to either the timely payment of indemnity benefits or timely payment of medical bills.<sup>17</sup>

Penalties for carrier failure to timely pay medical bills are provided for in two sections of the workers' compensation law. Section 440.185, F.S., sets forth reporting requirements for employees, employers, and carriers. Employees are required to notify their employer of an injury within 30 days after the initial date of manifestation of the injury, except as otherwise specified. Employers are required to report an injury or death to their workers' compensation carrier within 7 days of having knowledge of the injury. Carriers must then report the injury to the DFS within

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<sup>8</sup> Section 440.12(1), F.S.

<sup>9</sup> Sections 440.15(1)-(4), F.S.

<sup>10</sup> See "Informational Bulletin DFS-04-2012" (December 10, 2012). Available at <http://www.myfloridacfo.com>

<sup>11</sup> Section 440.15, F.S.

<sup>12</sup> The loss of an arm, leg, hand or foot, an injury that renders the employee a paraplegic, paraparetic, quadriplegic, quadriparetic, or the loss of sight in both eyes. See s. 440.15(2)(b), F.S.

<sup>13</sup> The maximum compensation rate is set in s. 440.12(2), F.S., and is equal to 100% of the statewide average weekly wage.

<sup>14</sup> Section 440.20(2)(a), F.S.

<sup>15</sup> Section 440.20(2)(b), F.S.

<sup>16</sup> Increased penalties are assessed against carriers that fail to achieve a minimum 90 percent performance standard for the payment of either medical or indemnity benefits.

<sup>17</sup> Section 440.20, F.S.

14 days. Section 440.593(4), F.S., relating to electronic reporting, authorizes the DFS to assess a civil penalty of up to \$500 per violation. The DFS has indicated that it utilizes s. 440.185(9), F.S., to assess penalties for violations of reporting requirements, but that it has never assessed a penalty greater than \$500 per violation or against an employer based upon a percentage of late filings.<sup>18</sup>

### **Reemployment Services and Evaluations**

For injured employees who are unemployed 60 days after the date of injury, who are receiving certain workers' compensation benefits and have not been provided medical care coordination and reemployment services voluntarily by the carrier, the carrier must determine whether the employee is likely to return to work and report its determination to the DFS and the employee. The DFS informs that the reports it receives vary from carrier to carrier, and that the DFS review of these reports is of marginal value. The DFS further reports that it has access to medical and claims data that would allow it to identify and reach out to injured employees in need of rehabilitation services and, thus, carrier submission of reemployment status reports is unnecessary.<sup>19</sup>

The DFS is required to conduct training and education screenings of injured employees upon referral of the carrier or employee request. Pursuant to s. 440.491(6), F.S., an employee must submit to, and the DFS must pay for, a vocational evaluation even when the employee has decided on a suitable reemployment-training plan that has been approved by the DFS. The DFS indicates that the average cost of a vocational evaluation exceeds \$1,000.<sup>20</sup>

### **Miscellaneous Provisions**

The DFS is the custodian of collective bargaining agreements (CBAs) that contain mutually agreed upon workers' compensation provisions (e.g., providing an alternative dispute resolution system, an agreed-upon list of medical providers, etc.). Such collectively bargained provisions may not diminish an employee's entitlement to benefits under the workers' compensation law. The DFS informs that it simply receives CBAs, does not use them in any way, and rarely ever receives a request for such documents.<sup>21</sup>

The Florida Self-Insurers Guaranty Association (FSIGA) monitors the financial strength of self-insured entities for the DFS and makes recommendations as to the qualifications to self-insure. Incorrect cross references within ch. 440.F.S. [reference to s. 440.38(1)(b)1., F.S., rather than s. 440.38(1)(b), F.S., in its entirety] create uncertainty as to the extent of the FSIGA's authority. The DFS is responsible for ensuring the timely payment of compensation and medical bills by workers' compensation carriers, for monitoring, auditing, and investigating carrier performance, and for assessing penalties for violations. Section 440.20, F.S., however, identifies the Office of Insurance Regulation as the regulatory body with these responsibilities.

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<sup>18</sup> DFS correspondence, *supra*, on file with staff of the Banking and Insurance Committee.

<sup>19</sup> DFS correspondence, *supra*, on file with staff of the Banking and Insurance Committee.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Section 440.02(8), F.S., authorizes the DFS to establish, by rule, “standard industrial classification” (SIC) codes with respect to the construction industry. Similarly, s. 440.11, F.S., relating to exclusiveness of liability, refers to “Standard Industrial Code 7363.” The SIC codes have been obsolete since 1997, and have been replaced with the North American Industrial Classification Code System (NAICS).

### III. Effect of Proposed Changes:

**Section 1** revises s. 440.02, F.S., relating to definitions, to eliminate outdated references to SIC codes and to update statutory language to provide for NAICS codes.

**Section 2** amends s. 440.05, F.S., relating to exemptions from coverage requirements, to eliminate the requirement of a Florida-only driver’s license for purposes of obtaining an exemption. The removal of this requirement will allow out-of-state officers to obtain an exemption via the electronic application process. Current practice at DFS is to accept paper applications from out-of-state applicants and issue exemptions once all other eligibility criteria are met.

**Section 3** amends s. 440.102, F.S., to provide a conforming cross reference.

**Section 4** amends s. 440.107, F.S., relating to enforcement of coverage requirements, to clarify that stop-work orders and penalty assessments against a LLC would be in effect for any successor entity, including a LLC.

**Section 5** amends s. 440.11, F.S., to eliminate an obsolete reference to SIC codes and provide an updated reference to NAICS codes.

**Section 6** amends s. 440.13, F.S., relating to medical services, to eliminate certification requirements for health care providers. Currently, certification by the DFS is a requirement for eligibility for payment under ch. 440, F.S. The bill makes conforming changes to eliminate the certification and decertification provisions.

The section allows a health care provider, carrier, or employer 45 days, rather than 30 days, to petition the DFS once a notice of disallowance or adjustment of a payment is received. Likewise, the carrier is provided 20 additional days (10 to 30) to submit documentation substantiating the disallowance or adjustment of payment. The section also provides DFS an additional 60 days (60 to 120) after receipt of all documentation to issue a written determination of a dispute.

The bill also revises provisions relating to the authority of the DFS to sanction health care providers for a pattern or practice of utilization. As an option, the DFS may impose a fine of \$5,000. Currently, the DFS may impose a fine in an amount *not to exceed* \$5,000.

The bill eliminates a provisions relating to the authority of the DFS to issue penalties against carriers for failure to pay medical bills in a timely manner. The DFS uses s. 440.20(6), F.S., as their authority to issue penalties.

**Section 7** amends s. 440.15(2), F.S., relating to temporary total disability (TTD) benefits to eliminate the current maximum weekly compensation rate of \$700. As a result, those injured workers with qualifying TTD injuries would receive 80 percent of their pre-injury average weekly wage subject to no maximum during the first 6 months of disability. Currently, injured workers' receiving TTD benefits receive 66 2/3 percent of their pre-injury average weekly wage subject to a maximum of 100 percent of the Florida state average weekly wage. The maximum workers' compensation rate for 2013 is \$816. Injured workers receiving TTD benefits as a result of an injury described in s. 440.15(2)(b), F.S., are eligible to receive TTD benefits equal to 80 percent of his or her pre-injury average weekly wage. The increased TTD compensation rate of 80 percent is paid during the first 6 months of disability, subject to a maximum weekly compensation rate of \$700. This increased compensation rate would only be paid if the employee is eligible for or has already started to collect permanent total disability benefits.

**Section 8** amends s. 440.185, F.S., relating to reporting requirements, to revise the penalties imposed on employers and carriers for failing to file any form, report, or notice to provide that an employer or carrier would be subject to fine not to exceed \$500 instead of \$1,000 for each failure or refusal to file. The bill eliminates the additional penalty of \$2,000 per failure if a carrier's noncompliance is more than 10 percent within a calendar year. The change in the penalty would comport the penalty with section 440.593(4), F.S., relating to electronic reporting, which authorizes the DFS to assess a civil penalty of up to \$500 per violation.

**Section 9** amends s. 440.20, F.S., relating to payment of compensation and medical bills, to correct references relating to the authority of the DFS. The bill makes the approval of advance payment of workers' compensation benefits the sole jurisdiction of Judges of Compensation Claims, and removes the DFS from the approval process in all circumstances. Currently, section 440.20(12), F.S., permits Judges of Compensation Claims or, under certain conditions, the DFS to approve the advance payment of workers' compensation benefits to injured employees. In cases in which the carrier and employer have stipulated to an advance payment in excess of \$2,000, the DFS approval of the advance payment is required.

**Section 10** amends s. 440.211, F.S., to eliminate DFS as the custodian of collective bargaining agreements.

**Section 11** amends s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association, to correct a cross reference, thereby clarifying the FSIGA's authority.

**Section 12** amends s. 440.491, F.S., relating to reemployment and evaluation of injured workers, to eliminate the requirement for a carrier to file reemployment status reports with DFS. Currently, a carrier must determine whether the employee is likely to return to work and report its determination to the DFS and the employee. The section is also amended to allow rather than require the DFS to provide vocational evaluations.

**Section 13** provides that this act will take effect July 1, 2013.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

According to the National Council of Compensation Insurance, the implementation of CS/SB 860 would likely result in negligible impact (less than 0.1 percent) on the overall workers' compensation costs of employers in Florida.<sup>22</sup> Due to the serious nature of the qualifying injuries, NCCI expects that only a small number of prospective cases would be affected by the removal of the \$700 cap on maximum weekly temporary total catastrophic benefits.

The elimination of the mandatory vocational evaluation prior to the provision of training, education, or other vocational services may allow injured workers to receive such benefits sooner and return to work in a more expeditious manner.

The bill will eliminate some reporting requirements for employers and carriers resulting in some indeterminate reduction in regulatory burden.

**C. Government Sector Impact:**

The bill eliminates unnecessary, duplicative, and conflicting regulatory provisions, which should assist DFS in administering the provisions of ch. 440, F.S., in a more efficient manner.

The bill eliminates the mandatory vocational evaluation under s. 440.491, F.S. The elimination of some of the evaluations could result in cost savings of approximately \$80,000. This estimated savings represents less than 0.1 percent of Workers' Compensation Administration Trust Fund expenditures for FY 2010-2011.

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<sup>22</sup> NCCI Analysis, January 28, 2013. On file with staff of the Banking and Insurance Committee.



The bill will provide additional time (from 60 days to 120 days) for the DFS to resolve reimbursement disputes and issue determination letters. According to the DFS, the DFS receives 50-200 petitions per month. For calendar year 2012, the DFS received over 2,000 petitions per month. The average number of days to resolve a case has increased from approximately 24 days to over 81 days.

**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.)

**CS by Banking and Insurance Committee on April 9, 2013:**

The CS provides the following changes:

- Eliminates changes to the formula used to assess state agencies for purposes of funding workers' compensation claims of state employees.
- Eliminates changes relating to types of entities that may file medical reimbursement disputes with the DFS.

- B. **Amendments:**

None.