

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; amending s. 440.49, F.S.; revising provisions relating to the assessment rate of the Special Disability Trust Fund; reducing the assessment rate limitation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7) (a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under

27 subsection (5) within 10 ~~5~~ business days after receipt of the
28 written request of the department, such failure shall be deemed
29 an immediate serious danger to public health, safety, or welfare
30 sufficient to justify service by the department of a stop-work
31 order on the employer, requiring the cessation of all business
32 operations. If the department makes such a determination, the
33 department shall issue a stop-work order within 72 hours. The
34 order shall take effect when served upon the employer or, for a
35 particular employer worksite, when served at that worksite. In
36 addition to serving a stop-work order at a particular worksite
37 which shall be effective immediately, the department shall
38 immediately proceed with service upon the employer which shall
39 be effective upon all employer worksites in the state for which
40 the employer is not in compliance. A stop-work order may be
41 served with regard to an employer's worksite by posting a copy
42 of the stop-work order in a conspicuous location at the
43 worksite. The order shall remain in effect until the department
44 issues an order releasing the stop-work order upon a finding
45 that the employer has come into compliance with the coverage
46 requirements of this chapter and has paid any penalty assessed
47 under this section. The department may issue an order of
48 conditional release from a stop-work order to an employer upon a
49 finding that the employer has complied with the coverage
50 requirements of this chapter, paid a penalty of \$1,000 as a down
51 payment, and ~~has~~ agreed to remit periodic payments of the
52 remaining penalty amount pursuant to a payment agreement

53 | schedule with the department or pay the remaining penalty amount
54 | in full. If an order of conditional release is issued, failure
55 | by the employer to pay the penalty in full or enter into a
56 | payment agreement with the department within 28 days after
57 | service of the stop-work order upon the employer, or to meet any
58 | term or condition of such penalty payment agreement, shall
59 | result in the immediate reinstatement of the stop-work order and
60 | the entire unpaid balance of the penalty shall become
61 | immediately due. ~~The department may require an employer who is~~
62 | ~~found to have failed to comply with the coverage requirements of~~
63 | ~~s. 440.38 to file with the department, as a condition of release~~
64 | ~~from a stop-work order, periodic reports for a probationary~~
65 | ~~period that shall not exceed 2 years that demonstrate the~~
66 | ~~employer's continued compliance with this chapter. The~~
67 | ~~department shall by rule specify the reports required and the~~
68 | ~~time for filing under this subsection.~~

69 | (d)1. In addition to any penalty, stop-work order, or
70 | injunction, the department shall assess against any employer who
71 | has failed to secure the payment of compensation as required by
72 | this chapter a penalty equal to 2 ~~1.5~~ times the amount the
73 | employer would have paid in premium when applying approved
74 | manual rates to the employer's payroll during periods for which
75 | it failed to secure the payment of workers' compensation
76 | required by this chapter within the preceding 2-year ~~3-year~~
77 | period or \$1,000, whichever is greater. For employers who have
78 | not been previously issued a stop-work order, the department

79 must allow the employer to receive a credit for the initial
80 payment of the estimated annual workers' compensation policy
81 premium, as determined by the carrier, to be applied to the
82 penalty. Before applying the credit to the penalty, the employer
83 must provide the department with documentation reflecting that
84 the employer has secured the payment of compensation pursuant to
85 s. 440.38 and proof of payment to the carrier. In order for the
86 department to apply a credit for an employer that has secured
87 the payment of compensation by entering into an employee leasing
88 contract with a licensed employee leasing company, the employer
89 must provide the department with a written attestation by a
90 representative from the employee leasing company that the
91 employer has entered into an employee leasing contract, the
92 dollar amount attributable to the initial payment of the
93 estimated workers' compensation premium for the employer, and
94 proof of payment to the employee leasing company. The \$1,000
95 penalty shall be assessed against the employer even if the
96 calculated penalty after the credit has been applied is less
97 than \$1,000.

98 2. Any subsequent violation within 5 years after the most
99 recent violation shall, in addition to the penalties set forth
100 in this subsection, be deemed a knowing act within the meaning
101 of s. 440.105.

102 (e) When an employer fails to provide business records
103 sufficient to enable the department to determine the employer's
104 payroll for the period requested for the calculation of the

105 penalty provided in paragraph (d), for penalty calculation
106 purposes, the imputed weekly payroll for each employee,
107 corporate officer, sole proprietor, or partner shall be the
108 statewide average weekly wage as defined in s. 440.12(2)
109 multiplied by 2 ~~1.5~~.

110 Section 2. Paragraph (a) of subsection (1), paragraph (a)
111 of subsection (2), and paragraph (a) of subsection (4) of
112 section 440.15, Florida Statutes, is amended to read:

113 440.15 Compensation for disability.—Compensation for
114 disability shall be paid to the employee, subject to the limits
115 provided in s. 440.12(2), as follows:

116 (1) PERMANENT TOTAL DISABILITY.—

117 (a) In case of total disability adjudged to be permanent,
118 $66\frac{2}{3}$ or 66.67 percent of the average weekly wages shall be
119 paid to the employee during the continuance of such total
120 disability. No compensation shall be payable under this section
121 if the employee is engaged in, or is physically capable of
122 engaging in, at least sedentary employment.

123 (2) TEMPORARY TOTAL DISABILITY.—

124 (a) Subject to subsection (7), in case of disability total
125 in character but temporary in quality, $66\frac{2}{3}$ or 66.67 percent
126 of the average weekly wages shall be paid to the employee during
127 the continuance thereof, not to exceed 104 weeks except as
128 provided in this subsection, s. 440.12(1), and s. 440.14(3).
129 Once the employee reaches the maximum number of weeks allowed,
130 or the employee reaches the date of maximum medical improvement,

131 | whichever occurs earlier, temporary disability benefits shall
132 | cease and the injured worker's permanent impairment shall be
133 | determined.

134 | (4) TEMPORARY PARTIAL DISABILITY.—

135 | (a) Subject to subsection (7), in case of temporary
136 | partial disability, compensation shall be equal to 80 percent of
137 | the difference between 80 percent of the employee's average
138 | weekly wage and the salary, wages, and other remuneration the
139 | employee is able to earn postinjury, as compared weekly;
140 | however, weekly temporary partial disability benefits may not
141 | exceed an amount equal to 66 2/3 or 66.67 percent of the
142 | employee's average weekly wage at the time of accident. In order
143 | to simplify the comparison of the preinjury average weekly wage
144 | with the salary, wages, and other remuneration the employee is
145 | able to earn postinjury, the department may by rule provide for
146 | payment of the initial installment of temporary partial
147 | disability benefits to be paid as a partial week so that payment
148 | for remaining weeks of temporary partial disability can coincide
149 | as closely as possible with the postinjury employer's work week.
150 | The amount determined to be the salary, wages, and other
151 | remuneration the employee is able to earn shall in no case be
152 | less than the sum actually being earned by the employee,
153 | including earnings from sheltered employment. Benefits shall be
154 | payable under this subsection only if overall maximum medical
155 | improvement has not been reached and the medical conditions
156 | resulting from the accident create restrictions on the injured

157 employee's ability to return to work.

158 Section 3. Paragraph (b) of subsection (1) and subsection
159 (3) of section 440.16, Florida Statutes, are amended to read:

160 440.16 Compensation for death.—

161 (1) If death results from the accident within 1 year
162 thereafter or follows continuous disability and results from the
163 accident within 5 years thereafter, the employer shall pay:

164 (b) Compensation, in addition to the above, in the
165 following percentages of the average weekly wages to the
166 following persons entitled thereto on account of dependency upon
167 the deceased, and in the following order of preference, subject
168 to the limitation provided in subparagraph 2., but such
169 compensation shall be subject to the limits provided in s.
170 440.12(2), shall not exceed \$150,000, and may be less than, but
171 shall not exceed, for all dependents or persons entitled to
172 compensation, 66 2/3 or 66.67 percent of the average wage:

173 1. To the spouse, if there is no child, 50 percent of the
174 average weekly wage, such compensation to cease upon the
175 spouse's death.

176 2. To the spouse, if there is a child or children, the
177 compensation payable under subparagraph 1. and, in addition, 16
178 2/3 percent on account of the child or children. However, when
179 the deceased is survived by a spouse and also a child or
180 children, whether such child or children are the product of the
181 union existing at the time of death or of a former marriage or
182 marriages, the judge of compensation claims may provide for the

183 payment of compensation in such manner as may appear to the
184 judge of compensation claims just and proper and for the best
185 interests of the respective parties and, in so doing, may
186 provide for the entire compensation to be paid exclusively to
187 the child or children; and, in the case of death of such spouse,
188 33 1/3 percent for each child. However, upon the surviving
189 spouse's remarriage, the spouse shall be entitled to a lump-sum
190 payment equal to 26 weeks of compensation at the rate of 50
191 percent of the average weekly wage as provided in s. 440.12(2),
192 unless the \$150,000 limit provided in this paragraph is
193 exceeded, in which case the surviving spouse shall receive a
194 lump-sum payment equal to the remaining available benefits in
195 lieu of any further indemnity benefits. In no case shall a
196 surviving spouse's acceptance of a lump-sum payment affect
197 payment of death benefits to other dependents.

198 3. To the child or children, if there is no spouse, 33 1/3
199 percent for each child.

200 4. To the parents, 25 percent to each, such compensation
201 to be paid during the continuance of dependency.

202 5. To the brothers, sisters, and grandchildren, 15 percent
203 for each brother, sister, or grandchild.

204 (3) Where, because of the limitation in paragraph (1)(b),
205 a person or class of persons cannot receive the percentage of
206 compensation specified as payable to or on account of such
207 person or class, there shall be available to such person or
208 class that proportion of such percentage as, when added to the

209 total percentage payable to all persons having priority of
 210 preference, will not exceed a total of said 66 2/3 or 66.67
 211 percent, which proportion shall be paid:

212 (a) To such person; or

213 (b) To such class, share and share alike, unless the judge
 214 of compensation claims determines otherwise in accordance with
 215 the provisions of subsection (4).

216 Section 4. Paragraphs (b) and (c) of subsection (9) of
 217 section 440.49, Florida Statutes, are amended to read:

218 440.49 Limitation of liability for subsequent injury
 219 through Special Disability Trust Fund.—

220 (9) SPECIAL DISABILITY TRUST FUND.—

221 (b)1. The Special Disability Trust Fund shall be
 222 maintained by annual assessments upon the insurance companies
 223 writing compensation insurance in the state, the commercial
 224 self-insurers under ss. 624.462 and 624.4621, the assessable
 225 mutuals as defined in s. 628.6011, and the self-insurers under
 226 this chapter, which assessments shall become due and be paid
 227 quarterly at the same time and in addition to the assessments
 228 provided in s. 440.51. Such payments shall be made by each
 229 carrier and self-insurer to the department for the Special
 230 Disability Trust Fund pursuant to department rule.

231 2. The department shall estimate annually in advance the
 232 amount necessary for the administration of this subsection and
 233 the maintenance of this fund pursuant to this paragraph ~~and~~
 234 ~~shall make such assessment in the manner hereinafter provided.~~

235 By July 1 of each year, the department shall calculate the
 236 assessment rate, which shall be based upon the net premiums
 237 written by carriers, the amount of premiums calculated by the
 238 department for self-insured employers, and the anticipated
 239 balance and expenses of the Special Disability Trust Fund for
 240 the next calendar year. Such assessment rate shall take effect
 241 January 1 of the next calendar year. Such amount shall be
 242 prorated among the insurance companies writing compensation
 243 insurance in the state and the self-insurers.

244 ~~2. The annual assessment shall be calculated to produce~~
 245 ~~during the next calendar year an amount which, when combined~~
 246 ~~with that part of the balance anticipated to be in the fund on~~
 247 ~~December 31 of the current calendar year which is in excess of~~
 248 ~~\$100,000, is equal to the average of:~~

249 ~~a. The sum of disbursements from the fund during the~~
 250 ~~immediate past 3 calendar years, and~~

251 ~~b. Two times the disbursements of the most recent calendar~~
 252 ~~year.~~

253 ~~e. Such assessment rate shall first apply on a calendar~~
 254 ~~year basis for the period beginning January 1, 2012, and shall~~
 255 ~~be included in workers' compensation rate filings approved by~~
 256 ~~the office which become effective on or after January 1, 2012.~~
 257 ~~The assessment rate effective January 1, 2011, shall also apply~~
 258 ~~to the interim period from July 1, 2011, through December 31,~~
 259 ~~2011, and shall be included in workers' compensation rate~~
 260 ~~filings, whether regular or amended, approved by the office~~

261 ~~which become effective on or after July 1, 2011. Thereafter, the~~
 262 ~~annual assessment rate shall take effect January 1 of the next~~
 263 ~~calendar year and shall be included in workers' compensation~~
 264 ~~rate filings approved by the office which become effective on or~~
 265 ~~after January 1 of the next calendar year. Assessments shall~~
 266 ~~become due and be paid quarterly.~~

267
 268 ~~Such amount shall be prorated among the insurance companies~~
 269 ~~writing compensation insurance in the state and the self-~~
 270 ~~insurers.~~

271 ~~3. The net premiums written by the companies for workers'~~
 272 ~~compensation in this state and the net premium written~~
 273 ~~applicable to the self-insurers in this state are the basis for~~
 274 ~~computing the amount to be assessed as a percentage of net~~
 275 ~~premiums. Such payments shall be made by each carrier and self-~~
 276 ~~insurer to the department for the Special Disability Trust Fund~~
 277 ~~in accordance with such regulations as the department~~
 278 ~~prescribes.~~

279 ~~3.4.~~ The Chief Financial Officer is authorized to receive
 280 and credit to such Special Disability Trust Fund any sum or sums
 281 that may at any time be contributed to the state by the United
 282 States under any Act of Congress, or otherwise, to which the
 283 state may be or become entitled by reason of any payments made
 284 out of such fund.

285 (c) Notwithstanding the Special Disability Trust Fund
 286 assessment rate calculated pursuant to this section, the rate

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287 | assessed may ~~shall~~ not exceed 2.50 ~~4.52~~ percent.

288 | Section 5. This act shall take effect July 1, 2014.