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CS/CS/HB 271, Engrossed 1

2014 Legislature

1
2 An act relating to workers' compensation; amending s.
3 440.107, F.S.; revising powers of the Department of
4 Financial Services relating to compliance with and
5 enforcement of workers' compensation coverage
6 requirements; providing for stop-work order
7 information to be available on the Division of
8 Workers' Compensation's website; revising requirements
9 for the release of stop-work orders; revising
10 penalties; amending ss. 440.15 and 440.16, F.S.;
11 revising rate formulas related to the determination of
12 compensation for disability and death; amending s.
13 440.49, F.S.; revising provisions relating to the
14 assessment rate of the Special Disability Trust Fund;
15 reducing the assessment rate limitation; providing an
16 effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraphs (a), (d), and (e) of subsection (7)
21 of section 440.107, Florida Statutes, are amended to read:

22 440.107 Department powers to enforce employer compliance
23 with coverage requirements.—

24 (7) (a) Whenever the department determines that an employer
25 who is required to secure the payment to his or her employees of



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26 | the compensation provided for by this chapter has failed to
27 | secure the payment of workers' compensation required by this
28 | chapter or to produce the required business records under
29 | subsection (5) within 10 ~~5~~ business days after receipt of the
30 | written request of the department, such failure shall be deemed
31 | an immediate serious danger to public health, safety, or welfare
32 | sufficient to justify service by the department of a stop-work
33 | order on the employer, requiring the cessation of all business
34 | operations. If the department makes such a determination, the
35 | department shall issue a stop-work order within 72 hours. The
36 | order shall take effect when served upon the employer or, for a
37 | particular employer worksite, when served at that worksite. In
38 | addition to serving a stop-work order at a particular worksite
39 | which shall be effective immediately, the department shall
40 | immediately proceed with service upon the employer which shall
41 | be effective upon all employer worksites in the state for which
42 | the employer is not in compliance. A stop-work order may be
43 | served with regard to an employer's worksite by posting a copy
44 | of the stop-work order in a conspicuous location at the
45 | worksite. Information related to an employer's stop-work order
46 | shall be made available on the division's website, be updated
47 | daily, and remain on the website for at least 5 years. The order
48 | shall remain in effect until the department issues an order
49 | releasing the stop-work order upon a finding that the employer
50 | has come into compliance with the coverage requirements of this



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51 | chapter and has paid any penalty assessed under this section.
52 | The department may issue an order of conditional release from a
53 | stop-work order to an employer upon a finding that the employer
54 | has complied with the coverage requirements of this chapter,
55 | paid a penalty of \$1,000 as a down payment, and ~~has~~ agreed to
56 | remit periodic payments of the remaining penalty amount pursuant
57 | to a payment agreement schedule with the department or pay the
58 | remaining penalty amount in full. If an order of conditional
59 | release is issued, failure by the employer to pay the penalty in
60 | full or enter into a payment agreement with the department
61 | within 28 days after service of the stop-work order upon the
62 | employer, or to meet any term or condition of such penalty
63 | payment agreement, shall result in the immediate reinstatement
64 | of the stop-work order and the entire unpaid balance of the
65 | penalty shall become immediately due. ~~The department may require~~
66 | ~~an employer who is found to have failed to comply with the~~
67 | ~~coverage requirements of s. 440.38 to file with the department,~~
68 | ~~as a condition of release from a stop-work order, periodic~~
69 | ~~reports for a probationary period that shall not exceed 2 years~~
70 | ~~that demonstrate the employer's continued compliance with this~~
71 | ~~chapter. The department shall by rule specify the reports~~
72 | ~~required and the time for filing under this subsection.~~

73 | (d)1. In addition to any penalty, stop-work order, or
74 | injunction, the department shall assess against any employer who
75 | has failed to secure the payment of compensation as required by



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76 | this chapter a penalty equal to 2 ~~1.5~~ times the amount the
77 | employer would have paid in premium when applying approved
78 | manual rates to the employer's payroll during periods for which
79 | it failed to secure the payment of workers' compensation
80 | required by this chapter within the preceding 2-year ~~3-year~~
81 | period or \$1,000, whichever is greater. For employers who have
82 | not been previously issued a stop-work order, the department
83 | must allow the employer to receive a credit for the initial
84 | payment of the estimated annual workers' compensation policy
85 | premium, as determined by the carrier, to be applied to the
86 | penalty. Before applying the credit to the penalty, the employer
87 | must provide the department with documentation reflecting that
88 | the employer has secured the payment of compensation pursuant to
89 | s. 440.38 and proof of payment to the carrier. In order for the
90 | department to apply a credit for an employer that has secured
91 | workers' compensation for leased employees by entering into an
92 | employee leasing contract with a licensed employee leasing
93 | company, the employer must provide the department with a written
94 | confirmation, by a representative from the employee leasing
95 | company, of the dollar or percentage amount attributable to the
96 | initial estimated workers' compensation expense for leased
97 | employees, and proof of payment to the employee leasing company.
98 | The \$1,000 penalty shall be assessed against the employer even
99 | if the calculated penalty after the credit has been applied is
100 | less than \$1,000.



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

105 (e) When an employer fails to provide business records
106 sufficient to enable the department to determine the employer's
107 payroll for the period requested for the calculation of the
108 penalty provided in paragraph (d), for penalty calculation
109 purposes, the imputed weekly payroll for each employee,
110 corporate officer, sole proprietor, or partner shall be the
111 statewide average weekly wage as defined in s. 440.12(2)
112 multiplied by 2 ~~1.5~~.

113 Section 2. Paragraph (a) of subsection (1), paragraph (a)
114 of subsection (2), and paragraph (a) of subsection (4) of
115 section 440.15, Florida Statutes, is amended to read:

116 440.15 Compensation for disability.—Compensation for
117 disability shall be paid to the employee, subject to the limits
118 provided in s. 440.12(2), as follows:

119 (1) PERMANENT TOTAL DISABILITY.—

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



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126 (2) TEMPORARY TOTAL DISABILITY.—

127 (a) Subject to subsection (7), in case of disability total
128 in character but temporary in quality, 66 2/3 or 66.67 percent
129 of the average weekly wages shall be paid to the employee during
130 the continuance thereof, not to exceed 104 weeks except as
131 provided in this subsection, s. 440.12(1), and s. 440.14(3).
132 Once the employee reaches the maximum number of weeks allowed,
133 or the employee reaches the date of maximum medical improvement,
134 whichever occurs earlier, temporary disability benefits shall
135 cease and the injured worker's permanent impairment shall be
136 determined.

137 (4) TEMPORARY PARTIAL DISABILITY.—

138 (a) Subject to subsection (7), in case of temporary
139 partial disability, compensation shall be equal to 80 percent of
140 the difference between 80 percent of the employee's average
141 weekly wage and the salary, wages, and other remuneration the
142 employee is able to earn postinjury, as compared weekly;
143 however, weekly temporary partial disability benefits may not
144 exceed an amount equal to 66 2/3 or 66.67 percent of the
145 employee's average weekly wage at the time of accident. In order
146 to simplify the comparison of the preinjury average weekly wage
147 with the salary, wages, and other remuneration the employee is
148 able to earn postinjury, the department may by rule provide for
149 payment of the initial installment of temporary partial
150 disability benefits to be paid as a partial week so that payment



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151 | for remaining weeks of temporary partial disability can coincide
152 | as closely as possible with the postinjury employer's work week.
153 | The amount determined to be the salary, wages, and other
154 | remuneration the employee is able to earn shall in no case be
155 | less than the sum actually being earned by the employee,
156 | including earnings from sheltered employment. Benefits shall be
157 | payable under this subsection only if overall maximum medical
158 | improvement has not been reached and the medical conditions
159 | resulting from the accident create restrictions on the injured
160 | employee's ability to return to work.

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

163 | 440.16 Compensation for death.—

164 | (1) If death results from the accident within 1 year
165 | thereafter or follows continuous disability and results from the
166 | accident within 5 years thereafter, the employer shall pay:

167 | (b) Compensation, in addition to the above, in the
168 | following percentages of the average weekly wages to the
169 | following persons entitled thereto on account of dependency upon
170 | the deceased, and in the following order of preference, subject
171 | to the limitation provided in subparagraph 2., but such
172 | compensation shall be subject to the limits provided in s.
173 | 440.12(2), shall not exceed \$150,000, and may be less than, but
174 | shall not exceed, for all dependents or persons entitled to
175 | compensation, 66 2/3 or 66.67 percent of the average wage:



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

179 2. To the spouse, if there is a child or children, the
180 compensation payable under subparagraph 1. and, in addition, 16
181 2/3 percent on account of the child or children. However, when
182 the deceased is survived by a spouse and also a child or
183 children, whether such child or children are the product of the
184 union existing at the time of death or of a former marriage or
185 marriages, the judge of compensation claims may provide for the
186 payment of compensation in such manner as may appear to the
187 judge of compensation claims just and proper and for the best
188 interests of the respective parties and, in so doing, may
189 provide for the entire compensation to be paid exclusively to
190 the child or children; and, in the case of death of such spouse,
191 33 1/3 percent for each child. However, upon the surviving
192 spouse's remarriage, the spouse shall be entitled to a lump-sum
193 payment equal to 26 weeks of compensation at the rate of 50
194 percent of the average weekly wage as provided in s. 440.12(2),
195 unless the \$150,000 limit provided in this paragraph is
196 exceeded, in which case the surviving spouse shall receive a
197 lump-sum payment equal to the remaining available benefits in
198 lieu of any further indemnity benefits. In no case shall a
199 surviving spouse's acceptance of a lump-sum payment affect
200 payment of death benefits to other dependents.



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

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

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

207 (3) Where, because of the limitation in paragraph (1)(b),
 208 a person or class of persons cannot receive the percentage of
 209 compensation specified as payable to or on account of such
 210 person or class, there shall be available to such person or
 211 class that proportion of such percentage as, when added to the
 212 total percentage payable to all persons having priority of
 213 preference, will not exceed a total of said 66 2/3 or 66.67
 214 percent, which proportion shall be paid:

215 (a) To such person; or

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

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

221 440.49 Limitation of liability for subsequent injury
 222 through Special Disability Trust Fund.—

223 (9) SPECIAL DISABILITY TRUST FUND.—

224 (b)1. The Special Disability Trust Fund shall be
 225 maintained by annual assessments upon the insurance companies



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226 writing compensation insurance in the state, the commercial
227 self-insurers under ss. 624.462 and 624.4621, the assessable
228 mutuals as defined in s. 628.6011, and the self-insurers under
229 this chapter, which assessments shall become due and be paid
230 quarterly at the same time and in addition to the assessments
231 provided in s. 440.51. Payments of assessments shall be made by
232 each carrier, self-insurer, and self-insured employer to the
233 department for the Special Disability Trust Fund pursuant to
234 department rule establishing such method of payment.

235 2. The department shall estimate annually in advance the
236 amount necessary for the administration of this subsection and
237 the maintenance of this fund pursuant to this paragraph ~~and~~
238 ~~shall make such assessment in the manner hereinafter provided.~~
239 By July 1 of each year, the department shall calculate the
240 assessment rate, which shall be based upon the net premiums
241 written by carriers and self-insurers, the amount of premiums
242 calculated by the department for self-insured employers, the sum
243 of the anticipated disbursements and expenses of the Special
244 Disability Trust Fund for the next calendar year, and the
245 expected fund balance for the next calendar year. Such
246 assessment rate shall take effect January 1 of the next calendar
247 year. Such amount shall be prorated among the insurance
248 companies writing workers' compensation insurance in the state,
249 the self-insurers, and the self-insured employers.

250 3. All reimbursement requests that are approved, but



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251 remain unpaid as of June 30, 2014, shall be paid by October 31,
252 2014.

253 ~~2. The annual assessment shall be calculated to produce~~
254 ~~during the next calendar year an amount which, when combined~~
255 ~~with that part of the balance anticipated to be in the fund on~~
256 ~~December 31 of the current calendar year which is in excess of~~
257 ~~\$100,000, is equal to the average of:~~

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

260 ~~b. Two times the disbursements of the most recent calendar~~
261 ~~year.~~

262 ~~e. Such assessment rate shall first apply on a calendar~~
263 ~~year basis for the period beginning January 1, 2012, and shall~~
264 ~~be included in workers' compensation rate filings approved by~~
265 ~~the office which become effective on or after January 1, 2012.~~
266 ~~The assessment rate effective January 1, 2011, shall also apply~~
267 ~~to the interim period from July 1, 2011, through December 31,~~
268 ~~2011, and shall be included in workers' compensation rate~~
269 ~~filings, whether regular or amended, approved by the office~~
270 ~~which become effective on or after July 1, 2011. Thereafter, the~~
271 ~~annual assessment rate shall take effect January 1 of the next~~
272 ~~calendar year and shall be included in workers' compensation~~
273 ~~rate filings approved by the office which become effective on or~~
274 ~~after January 1 of the next calendar year. Assessments shall~~
275 ~~become due and be paid quarterly.~~



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277 ~~Such amount shall be prorated among the insurance companies~~
278 ~~writing compensation insurance in the state and the self-~~
279 ~~insurers.~~

280 ~~3. The net premiums written by the companies for workers'~~
281 ~~compensation in this state and the net premium written~~
282 ~~applicable to the self-insurers in this state are the basis for~~
283 ~~computing the amount to be assessed as a percentage of net~~
284 ~~premiums. Such payments shall be made by each carrier and self-~~
285 ~~insurer to the department for the Special Disability Trust Fund~~
286 ~~in accordance with such regulations as the department~~
287 ~~prescribes.~~

288 4. The Chief Financial Officer is authorized to receive
289 and credit to such Special Disability Trust Fund any sum or sums
290 that may at any time be contributed to the state by the United
291 States under any Act of Congress, or otherwise, to which the
292 state may be or become entitled by reason of any payments made
293 out of such fund.

294 (c) Notwithstanding the Special Disability Trust Fund
295 assessment rate calculated pursuant to this section, the rate
296 assessed may ~~shall~~ not exceed 2.50 ~~4.52~~ percent.

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