

By the Committee on Appropriations; and Senator Galvano

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1 A bill to be entitled  
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 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  
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

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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 and updated  
47 daily. The information shall remain on the website for at least  
48 5 years. The order shall remain in effect until the department  
49 issues an order releasing the stop-work order upon a finding  
50 that the employer has come into compliance with the coverage  
51 requirements of this chapter and has paid any penalty assessed  
52 under this section. The department may issue an order of  
53 conditional release from a stop-work order to an employer upon a  
54 finding that the employer has complied with the coverage  
55 requirements of this chapter, paid a penalty of \$1,000 as a down  
56 payment, and ~~has~~ agreed to remit periodic payments of the  
57 remaining penalty amount pursuant to a payment agreement  
58 schedule with the department or pay the remaining penalty amount

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

74 (d)1. In addition to any penalty, stop-work order, or  
75 injunction, the department shall assess against any employer who  
76 has failed to secure the payment of compensation as required by  
77 this chapter a penalty equal to 2 ~~1.5~~ times the amount the  
78 employer would have paid in premium when applying approved  
79 manual rates to the employer's payroll during periods for which  
80 it failed to secure the payment of workers' compensation  
81 required by this chapter within the preceding 2-year ~~3-year~~  
82 period or \$1,000, whichever is greater. For employers who have  
83 not been previously issued a stop-work order, the department  
84 shall allow the employer to receive a credit for the initial  
85 payment of the estimated annual workers' compensation policy  
86 premium, as determined by the carrier, to be applied to the  
87 penalty. Before the department applies the credit to the

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88 penalty, the employer must provide the department with  
89 documentation reflecting that the employer has secured the  
90 payment of compensation pursuant to s. 440.38 and proof of  
91 payment to the carrier. In order for the department to apply a  
92 credit for an employer that has secured workers' compensation  
93 for leased employees by entering into an employee leasing  
94 contract with a licensed employee leasing company, the employer  
95 must provide the department with a written confirmation by a  
96 representative from the employee leasing company of the dollar  
97 or percentage amount attributable to the initial estimated  
98 workers' compensation expense for leased employees and proof of  
99 payment to the employee leasing company. The \$1,000 penalty  
100 shall be assessed against the employer even if the calculated  
101 penalty after the credit has been applied is less than \$1,000.

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

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

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

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

120 (1) PERMANENT TOTAL DISABILITY.—

121 (a) In case of total disability adjudged to be permanent,  
122 66 2/3 or 66.67 percent of the average weekly wages shall be  
123 paid to the employee during the continuance of such total  
124 disability. ~~No~~ Compensation is not ~~shall be~~ payable under this  
125 section if the employee is engaged in, or is physically capable  
126 of engaging in, at least sedentary employment.

127 (2) TEMPORARY TOTAL DISABILITY.—

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

138 (4) TEMPORARY PARTIAL DISABILITY.—

139 (a) Subject to subsection (7), in case of temporary partial  
140 disability, compensation shall be equal to 80 percent of the  
141 difference between 80 percent of the employee's average weekly  
142 wage and the salary, wages, and other remuneration the employee  
143 is able to earn postinjury, as compared weekly; however, weekly  
144 temporary partial disability benefits may not exceed an amount  
145 equal to 66 2/3 or 66.67 percent of the employee's average

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146 weekly wage at the time of accident. In order to simplify the  
147 comparison of the preinjury average weekly wage with the salary,  
148 wages, and other remuneration the employee is able to earn  
149 postinjury, the department may by rule provide for payment of  
150 the initial installment of temporary partial disability benefits  
151 to be paid as a partial week so that payment for remaining weeks  
152 of temporary partial disability can coincide as closely as  
153 possible with the postinjury employer's work week. The amount  
154 determined to be the salary, wages, and other remuneration the  
155 employee is able to earn shall in no case be less than the sum  
156 actually being earned by the employee, including earnings from  
157 sheltered employment. Benefits are ~~shall be~~ payable under this  
158 subsection only if overall maximum medical improvement has not  
159 been reached and the medical conditions resulting from the  
160 accident create restrictions on the injured employee's ability  
161 to return to work.

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

164 440.16 Compensation for death.—

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

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

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175 shall not exceed, for all dependents or persons entitled to  
176 compensation,  $66 \frac{2}{3}$  or 66.67 percent of the average wage:

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

180 2. To the spouse, if there is a child or children, the  
181 compensation payable under subparagraph 1. and, in addition,  $16 \frac{2}{3}$   
182 or 16.67 percent on account of the child or children.  
183 However, when the deceased is survived by a spouse and also a  
184 child or children, whether such child or children are the  
185 product of the union existing at the time of death or of a  
186 former marriage or marriages, the judge of compensation claims  
187 may provide for the payment of compensation in such manner as  
188 may appear to the judge of compensation claims just and proper  
189 and for the best interests of the respective parties and, in so  
190 doing, may provide for the entire compensation to be paid  
191 exclusively to the child or children; and, in the case of death  
192 of such spouse,  $33 \frac{1}{3}$  or 33.33 percent for each child. However,  
193 upon the surviving spouse's remarriage, the spouse shall be  
194 entitled to a lump-sum payment equal to 26 weeks of compensation  
195 at the rate of 50 percent of the average weekly wage as provided  
196 in s. 440.12(2), unless the \$150,000 limit provided in this  
197 paragraph is exceeded, in which case the surviving spouse shall  
198 receive a lump-sum payment equal to the remaining available  
199 benefits in lieu of any further indemnity benefits. ~~In no case~~  
200 ~~shall~~ A surviving spouse's acceptance of a lump-sum payment does  
201 not affect payment of death benefits to other dependents.  
202 3. To the child or children, if there is no spouse,  $33 \frac{1}{3}$   
203 or 33.33 percent for each child.

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

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

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

216 (a) To such person; or

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

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

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

224 (9) SPECIAL DISABILITY TRUST FUND.—

225 (b)1. The Special Disability Trust Fund shall be maintained  
226 by annual assessments upon the insurance companies writing  
227 compensation insurance in the state, the commercial self-  
228 insurers under ss. 624.462 and 624.4621, the assessable mutuals  
229 as defined in s. 628.6011, and the self-insurers under this  
230 chapter, which assessments shall become due and be paid  
231 quarterly at the same time and in addition to the assessments  
232 provided in s. 440.51. Payments of assessments shall be made by

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233 each carrier, self-insurer, and self-insured employer to the  
234 department for the Special Disability Trust Fund pursuant to  
235 department rule establishing such method of payment.

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

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

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

258 ~~b. Two times the disbursements of the most recent calendar~~  
259 ~~year.~~

260 ~~c. Such assessment rate shall first apply on a calendar~~  
261 ~~year basis for the period beginning January 1, 2012, and shall~~

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

274  
275 ~~Such amount shall be prorated among the insurance companies~~  
276 ~~writing compensation insurance in the state and the self-~~  
277 ~~insurers.~~

278 3. A reimbursement request that has been approved but  
279 remains unpaid as of June 30, 2014, shall be paid by October 31,  
280 2014 ~~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 and  
289 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

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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 2.5 ~~4.52~~ percent.

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