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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (40) of section 440.02, Florida
Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the
context clearly requires otherwise, the following terms shall
have the following meanings:

(40) "Specificity," "specific," or "specifically"



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11 "Specificity" means, for purposes of determining the adequacy of
12 a petition for benefits under s. 440.192, information on the
13 petition for benefits sufficient to put the employer or carrier
14 on notice of the exact statutory classification and outstanding
15 time period for each requested benefit, the specific amount of
16 each requested benefit, the calculation used for computing the
17 specific amount of each requested benefit, and ~~of benefits being~~
18 ~~requested and includes~~ a detailed explanation of any such
19 benefit ~~benefits~~ received that should be increased, decreased,
20 changed, or otherwise modified. If the petition is for medical
21 benefits, the information must ~~shall~~ include specific details as
22 to why such benefits are being requested, including details
23 demonstrating that such benefits have specifically been denied
24 by the adjuster responsible for determining whether benefits are
25 payable to the claimant; why such benefits are medically
26 necessary;; and why current treatment, if any, is not
27 sufficient. Any petition requesting alternate or other medical
28 care, including, but not limited to, petitions requesting
29 psychiatric or psychological treatment, must specifically
30 identify the physician, as defined in s. 440.13(1), who is
31 recommending such treatment. A copy of a report from such
32 physician making the recommendation for alternate or other
33 medical care must ~~shall~~ also be attached to the petition, and
34 the petition must include specific allegations and statements of
35 fact supporting that the adjuster handling payment of benefits
36 to the injured employee specifically denied the requested
37 treatment. A judge of compensation claims may ~~shall~~ not order
38 such treatment if a physician is not recommending such
39 treatment.



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40 Section 2. Subsection (3) of section 440.093, Florida
41 Statutes, is amended to read:

42 440.093 Mental and nervous injuries.—

43 (3) Subject to the payment of permanent benefits under s.
44 440.15, in no event shall temporary benefits for a compensable
45 mental or nervous injury be paid for more than 6 months after
46 the date of maximum medical improvement for the injured
47 employee's physical injury or injuries, which shall be included
48 in the maximum number of ~~period of 104~~ weeks as provided in s.
49 440.15(2), ~~and (4), and (13)~~. Mental or nervous injuries are
50 compensable only in accordance with the terms of this section.

51 Section 3. Paragraph (c) of subsection (3) of section
52 440.105, Florida Statutes, is amended to read:

53 440.105 Prohibited activities; reports; penalties;
54 limitations.—

55 (3) Whoever violates any provision of this subsection
56 commits a misdemeanor of the first degree, punishable as
57 provided in s. 775.082 or s. 775.083.

58 (c) Except for an attorney retained by an injured employee
59 and receiving a fee or other consideration from the injured
60 employee under contract with the injured employee, it is
61 unlawful for any ~~attorney or other~~ person, in his or her
62 individual capacity or in his or her capacity as a public or
63 private employee, or for any firm, corporation, partnership, or
64 association to receive any fee or other consideration or any
65 gratuity from a person on account of services rendered for a
66 claimant ~~person~~ in connection with any proceedings arising under
67 this chapter, unless such fee, consideration, or gratuity is
68 approved by a judge of compensation claims or by the Deputy



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69 Chief Judge of Compensation Claims.

70 Section 4. Subsection (1) of section 440.11, Florida
71 Statutes, is amended to read:

72 440.11 Exclusiveness of liability.—

73 (1) The liability of an employer prescribed in s. 440.10
74 shall be exclusive and in place of all other liability,
75 including vicarious liability, of such employer to any third-
76 party tortfeasor and to the employee, the legal representative
77 thereof, husband or wife, parents, dependents, next of kin, and
78 anyone otherwise entitled to recover damages from such employer
79 at law or in admiralty on account of such injury or death,
80 except as follows:

81 (a) If an employer fails to secure payment of compensation
82 as required by this chapter, an injured employee, or the legal
83 representative thereof in case death results from the injury,
84 may elect to claim compensation under this chapter or to
85 maintain an action at law or in admiralty for damages on account
86 of such injury or death. In such action the defendant may not
87 plead as a defense that the injury was caused by negligence of a
88 fellow employee, that the employee assumed the risk of the
89 employment, or that the injury was due to the comparative
90 negligence of the employee.

91 (b) When an employer commits an intentional tort that
92 causes the injury or death of the employee. For purposes of this
93 paragraph, an employer's actions are ~~shall be~~ deemed to
94 constitute an intentional tort and not an accident only when the
95 employee proves, by clear and convincing evidence, that:

96 1. The employer deliberately intended to injure the
97 employee; or



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98 2. The employer engaged in conduct that the employer knew,
99 based on prior similar accidents or on explicit warnings
100 specifically identifying a known danger, was virtually certain
101 to result in injury or death to the employee, and the employee
102 was not aware of the risk because the danger was not apparent
103 and the employer deliberately concealed or misrepresented the
104 danger so as to prevent the employee from exercising informed
105 judgment about whether to perform the work.
106
107 The same immunities from liability enjoyed by an employer shall
108 extend as well to each employee of the employer when such
109 employee is acting in furtherance of the employer's business and
110 the injured employee is entitled to receive benefits under this
111 chapter. Such fellow-employee immunities do not apply ~~shall not~~
112 ~~be applicable~~ to an employee who acts, with respect to a fellow
113 employee, with willful and wanton disregard or unprovoked
114 physical aggression or with gross negligence when such acts
115 result in injury or death or such acts proximately cause such
116 injury or death, ~~nor shall such immunities be applicable to~~
117 ~~employees of the same employer when each is operating in the~~
118 ~~furtherance of the employer's business but they are assigned~~
119 ~~primarily to unrelated works within private or public~~
120 ~~employment~~. The same immunity provisions enjoyed by an employer
121 shall also apply to any sole proprietor, partner, corporate
122 officer or director, supervisor, or other person who in the
123 course and scope of his or her duties acts in a managerial or
124 policymaking capacity and the conduct which caused the alleged
125 injury arose within the course and scope of said managerial or
126 policymaking duties and was not a violation of a law, whether or



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127 not a violation was charged, for which the maximum penalty which
128 may be imposed does not exceed 60 days' imprisonment as set
129 forth in s. 775.082. The immunity from liability provided in
130 this subsection extends to county governments with respect to
131 employees of county constitutional officers whose offices are
132 funded by the board of county commissioners.

133 Section 5. Paragraph (a) of subsection (2), paragraph (d)
134 of subsection (3), paragraphs (a) and (e) of subsection (4), and
135 subsection (6) of section 440.15, Florida Statutes, are amended,
136 and subsection (13) is added to that section, to read:

137 440.15 Compensation for disability.—Compensation for
138 disability shall be paid to the employee, subject to the limits
139 provided in s. 440.12(2), as follows:

140 (2) TEMPORARY TOTAL DISABILITY.—

141 (a) Subject to subsections ~~subsection~~ (7) and (13), in case
142 of disability total in character but temporary in quality, $66\frac{2}{3}$ or 66.67 percent of the average weekly wages must ~~shall~~ be
143 paid to the employee during the continuance thereof, ~~not to~~
144 ~~exceed 104 weeks~~ except as provided in this subsection, s.
145 440.12 ~~s. 440.12(1)~~, and s. 440.14 ~~s. 440.14(3)~~. Once the
146 employee reaches the maximum number of weeks allowed, or the
147 employee reaches overall ~~the date of~~ maximum medical
148 improvement, whichever occurs earlier, temporary disability
149 benefits must ~~shall~~ cease and the injured worker's permanent
150 impairment must ~~shall~~ be determined.

151 (3) PERMANENT IMPAIRMENT BENEFITS.—

152 (d) After the employee has been certified by a doctor as
153 having reached maximum medical improvement or 6 weeks before the
154 expiration of temporary benefits, whichever occurs earlier, the
155



156 certifying doctor shall evaluate the condition of the employee
157 and assign an impairment rating, using the impairment schedule
158 referred to in paragraph (b). If the certification and
159 evaluation are performed by a doctor other than the employee's
160 treating doctor, the certification and evaluation must be
161 submitted to the treating doctor, the employee, and the carrier
162 within 10 days after the evaluation. The treating doctor must
163 indicate to the carrier agreement or disagreement with the other
164 doctor's certification and evaluation.

165 1. The certifying doctor shall issue a written report to
166 the employee and the carrier certifying that maximum medical
167 improvement has been reached, stating the impairment rating to
168 the body as a whole, and providing any other information
169 required by the department by rule. The carrier shall establish
170 an overall maximum medical improvement date and permanent
171 impairment rating, based upon all such reports.

172 2. Within 14 days after the carrier's knowledge of each
173 maximum medical improvement date and impairment rating to the
174 body as a whole upon which the carrier is paying benefits, the
175 carrier shall report such maximum medical improvement date and,
176 when determined, the overall maximum medical improvement date
177 and associated impairment rating to the department in a format
178 as set forth in department rule. If the employee has not been
179 certified as having reached overall maximum medical improvement
180 before the expiration of 254 ~~98~~ weeks after the date temporary
181 disability benefits begin to accrue, the carrier shall notify
182 the treating doctor of the requirements of this section.

183 3. If an employee receiving benefits under subsection (2),
184 subsection (4), or both subsections (2) and (4) has not reached



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185 overall maximum medical improvement before receiving the maximum
186 number of weeks of temporary disability benefits described in
187 subsection (13), the employee must receive benefits under this
188 subsection for an injury resulting from the accident in
189 accordance with the estimated impairment rating for the body as
190 a whole; or, if multiple injuries are sustained, in accordance
191 with the estimated combined impairment ratings for the body as a
192 whole in the 1996 Florida Uniform Permanent Impairment Rating
193 Schedule. Impairment benefits received under this subparagraph
194 must be credited against indemnity benefits subsequently due to
195 the employee.

196 (4) TEMPORARY PARTIAL DISABILITY.—

197 (a) Subject to subsections (6), ~~subsection~~ (7), and (13),
198 in case of temporary partial disability, compensation must ~~shall~~
199 be equal to 80 percent of the difference between 80 percent of
200 the employee's average weekly wage and the salary, wages, and
201 other remuneration the employee is able to earn postinjury, as
202 compared weekly; however, weekly temporary partial disability
203 benefits may not exceed an amount equal to 66 2/3 or 66.67
204 percent of the employee's average weekly wage at the time of
205 accident. In order to simplify the comparison of the preinjury
206 average weekly wage with the salary, wages, and other
207 remuneration the employee is able to earn postinjury, the
208 department may by rule provide for payment of the initial
209 installment of temporary partial disability benefits to be paid
210 as a partial week so that payment for remaining weeks of
211 temporary partial disability can coincide as closely as possible
212 with the postinjury employer's work week. The amount determined
213 to be the salary, wages, and other remuneration the employee is



214 able to earn shall in no case be less than the sum actually
215 being earned by the employee, including earnings from sheltered
216 employment. Benefits are ~~shall be~~ payable under this subsection
217 only if overall maximum medical improvement has not been reached
218 and the medical conditions resulting from the accident create
219 restrictions on the injured employee's ability to return to
220 work.

221 (e) Subject to subsections (6), (7), and (13), such
222 benefits must ~~shall~~ be paid during the continuance of such
223 disability, ~~not to exceed a period of 104 weeks,~~ as provided by
224 this subsection and ~~subsection (2).~~ ~~Once the injured employee~~
225 ~~reaches the maximum number of weeks, temporary disability~~
226 ~~benefits cease and the injured worker's permanent impairment~~
227 ~~must be determined.~~ If the employee is terminated from
228 postinjury employment based on the employee's misconduct,
229 temporary partial disability benefits are not payable as
230 provided for in this section. The department shall by rule
231 specify forms and procedures governing the method and time for
232 payment of temporary disability benefits for dates of accidents
233 before January 1, 1994, and for dates of accidents on or after
234 January 1, 1994.

235 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee
236 refuses employment suitable to the capacity thereof, offered to
237 or procured therefor, such employee is ~~shall~~ not ~~be~~ entitled to
238 any compensation at any time during the continuance of such
239 refusal unless at any time in the opinion of the judge of
240 compensation claims such refusal is justifiable. Time periods
241 for the payment of benefits in accordance with this section must
242 ~~shall~~ be counted in determining the limitation of benefits as



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243 provided for in subsection (13) paragraphs (2)(a), (3)(e), and
244 (4)(b).

245 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of
246 benefits received by an employee for temporary total disability
247 payable pursuant to subsection (2), temporary partial disability
248 payable pursuant to subsection (4), and temporary total
249 disability payable pursuant to s. 440.491 may not exceed 260
250 weeks.

251 Section 6. Section 440.1915, Florida Statutes, is created
252 to read:

253 440.1915 Notice regarding payment of attorney fees.—Before
254 engaging an attorney or other representative for services
255 related to a petition for benefits under s. 440.192 or s.
256 440.25, an injured employee or any other party making a claim
257 for benefits under this chapter through an attorney shall attest
258 with his or her personal signature that he or she has reviewed,
259 understands, and acknowledges the following statement, which
260 must be in at least 14-point bold type: "THE WORKERS'
261 COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES.
262 YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO
263 PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN
264 THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN
265 ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE
266 REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF
267 YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE
268 YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION
269 BEFORE YOU SIGN IT." If the injured employee or other party does
270 not sign or refuses to sign the document attesting that he or
271 she has reviewed, understands, and acknowledges the statement,



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272 the injured employee or other party making a claim under this
273 chapter may not proceed with a petition for benefits under s.
274 440.192 or s. 440.25, except pro se, until such signature is
275 obtained.

276 Section 7. Subsections (2), (4), (5), and (7) of section
277 440.192, Florida Statutes, are amended, and subsection (1) of
278 that section is republished, to read:

279 440.192 Procedure for resolving benefit disputes.—

280 (1) Any employee may, for any benefit that is ripe, due,
281 and owing, file with the Office of the Judges of Compensation
282 Claims a petition for benefits which meets the requirements of
283 this section and the definition of specificity in s. 440.02. An
284 employee represented by an attorney shall file by electronic
285 means approved by the Deputy Chief Judge. An employee not
286 represented by an attorney may file by certified mail or by
287 electronic means approved by the Deputy Chief Judge. The
288 department shall inform employees of the location of the Office
289 of the Judges of Compensation Claims and the office's website
290 address for purposes of filing a petition for benefits. The
291 employee shall also serve copies of the petition for benefits by
292 certified mail, or by electronic means approved by the Deputy
293 Chief Judge, upon the employer and the employer's carrier. The
294 Deputy Chief Judge shall refer the petitions to the judges of
295 compensation claims.

296 (2) Upon receipt of a petition, the Office of the Judges of
297 Compensation Claims, or upon motion, the assigned judge of
298 compensation claims, shall review the each petition and shall
299 dismiss the each petition or any portion of the such-a petition
300 which that does not comply with the requirements of this



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301 section, does not meet the definition of specificity under s.
302 440.02(40), and does not ~~on its face~~ specifically identify or
303 itemize the following:

304 (a) The name, address, and telephone number, ~~and social~~
305 ~~security number~~ of the employee.

306 (b) The name, address, and telephone number of the
307 employer.

308 (c) A detailed description of the injury and cause of the
309 injury, including ~~the location of the occurrence and the date or~~
310 dates of the accident and the county in this state or, if the
311 accident occurred outside of this state, the state where the
312 accident occurred.

313 (d) A detailed description of the employee's job, work
314 responsibilities, and work the employee was performing when the
315 injury occurred.

316 (e) The specific time period for which compensation and the
317 specific classification of compensation were not timely
318 provided.

319 (f) The specific date of maximum medical improvement,
320 character of disability, and specific statement of all benefits
321 or compensation that the employee is seeking. A claim for
322 permanent benefits must include the specific date of maximum
323 medical improvement and the specific date on which such
324 permanent benefits are claimed to begin.

325 (g) All specific travel costs to which the employee
326 believes she or he is entitled, including dates of travel and
327 purpose of travel, means of transportation, and mileage and
328 including the date the request for mileage was filed with the
329 carrier and a copy of the request filed with the carrier.



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330 (h) Specific listing of all medical charges alleged unpaid,
331 including the name and address of the medical provider, the
332 amounts due, and the specific dates of treatment.

333 (i) The type or nature of treatment care or attendance
334 sought and the justification for such treatment. If the employee
335 is under the care of a physician for an injury identified under
336 paragraph (c), a copy of the physician's request, authorization,
337 or recommendation for treatment, care, or attendance must
338 accompany the petition.

339 (j) The specific amount of compensation claimed and the
340 methodology used to calculate the average weekly wage, if the
341 average weekly wage calculated by the employer or carrier is
342 disputed. There is a rebuttable presumption that the average
343 weekly wage and corresponding compensation calculated by the
344 employer or carrier is accurate.

345 (k) Specific explanation of any other disputed issue that a
346 judge of compensation claims will be called to rule upon.

347 (l) The signed attestation required pursuant to s.
348 440.1915.

349 (m) Certification and evidence of a good faith attempt to
350 resolve the dispute pursuant to subsection (4).

351
352 The dismissal of any petition or portion of such a petition
353 under this subsection ~~section~~ is without prejudice and does not
354 require a hearing.

355 (4) (a) Before filing a petition, the claimant, or if the
356 claimant is represented by counsel, the claimant's attorney,
357 shall make a good faith effort to resolve the dispute. The
358 petition must include:



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359 1. A certification by the claimant or, if the claimant is
360 represented by counsel, the claimant's attorney, stating that
361 the claimant, or attorney if the claimant is represented by
362 counsel, has made a good faith effort to resolve the dispute and
363 that the claimant or attorney was unable to resolve the dispute
364 with the carrier, or the employer if self-insured; and

365 2. Evidence demonstrating such good faith attempt to
366 resolve the dispute as described in the certification.

367 (b) If the petition is not dismissed under subsection (2),
368 the judge of compensation claims has jurisdiction to determine,
369 in his or her independent discretion, whether a good faith
370 effort to resolve the dispute was made by the claimant or the
371 claimant's attorney. If the judge of compensation claims
372 determines that the claimant or the claimant's attorney did not
373 make a good faith effort to resolve the dispute before filing
374 the petition for benefits, the judge of compensation claims must
375 dismiss the petition and may impose sanctions to ensure
376 compliance with this subsection, which may include, but are not
377 limited to, assessment of attorney fees payable by the
378 claimant's attorney.

379 (5)(a) All motions to dismiss must state with particularity
380 the basis for the motion. The judge of compensation claims shall
381 enter an order upon such motions without hearing, unless good
382 cause for hearing is shown. Dismissal of any petition or portion
383 of a petition under this subsection is without prejudice.

384 (b) Upon motion that a petition or a portion of a petition
385 be dismissed for lack of specificity, a judge of compensation
386 claims shall enter an order on the motion, unless stipulated in
387 writing by the parties, within 10 days after the motion is



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388 filed, or, if good cause for a hearing is shown, within 20 days
389 after a hearing on the motion. When any petition or portion of a
390 petition is dismissed for lack of specificity under this
391 subsection, the claimant must be allowed 20 days after the date
392 of the order of dismissal in which to file an amended petition.
393 Any grounds for dismissal for lack of specificity under this
394 section which are not asserted within 30 days after receipt of
395 the petition for benefits are thereby waived.

396 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of
397 compensation claims may not award attorney ~~attorney's~~ fees
398 payable by the employer or carrier for services expended or
399 costs incurred before: ~~prior to~~

400 (a) The filing of a petition that meets the definition of
401 specificity under s. 440.02(40) and that includes all items
402 required under subsection (2); and

403 (b) The claimant or the claimant's attorney, if the
404 claimant is represented by counsel, has made a good faith effort
405 to resolve the dispute ~~does not meet the requirements of this~~
406 ~~section.~~

407 Section 8. Paragraph (c) of subsection (11) of section
408 440.20, Florida Statutes, is amended to read:

409 440.20 Time for payment of compensation and medical bills;
410 penalties for late payment.-

411 (11)

412 (c) Notwithstanding s. 440.21(2), when a claimant is
413 represented by counsel, the claimant may waive all rights to any
414 and all benefits under this chapter by entering into a
415 settlement agreement releasing the employer and the carrier from
416 liability for workers' compensation benefits in exchange for a



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417 lump-sum payment to the claimant. The settlement agreement need
418 not be approved ~~requires approval~~ by the judge of compensation
419 claims, and only as to the attorney's fees paid to the
420 ~~claimant's attorney by the claimant.~~ the parties need not submit
421 any information or documentation in support of the settlement,
422 except for as needed to justify the amount of the settlement and
423 the attorney attorney's fees and costs paid by the claimant to
424 the claimant's attorney. Neither the employer nor the carrier is
425 responsible for any attorney attorney's fees relating to the
426 settlement and release of claims under this section. Payment of
427 the lump-sum settlement amount must be made within 14 days after
428 the date the judge of compensation claims mails the order
429 approving the settlement allocation's recovery of child support
430 arrearages under paragraph (d) attorney's fees. Any order
431 entered by a judge of compensation claims ~~approving the~~
432 ~~attorney's fees as set out in the settlement~~ under this
433 subsection is not considered to be an award and is not subject
434 to modification or review. The judge of compensation claims
435 shall report these settlements to the Deputy Chief Judge in
436 accordance with ~~the requirements set forth in~~ paragraphs (a) and
437 (b). Settlements entered into under this subsection are valid
438 and apply to all dates of accident.

439 Section 9. Paragraphs (d), (h), and (j) of subsection (4)
440 of section 440.25, Florida Statutes, are amended to read:

441 440.25 Procedures for mediation and hearings.—

442 (4)

443 (d) The final hearing shall be held within 210 days after
444 receipt of the petition for benefits in the county where the
445 injury occurred, if the injury occurred in this state, unless



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446 otherwise agreed to between the parties and authorized by the
447 judge of compensation claims in the county where the injury
448 occurred. However, the claimant may waive the timeframes within
449 this section for good cause shown. If the injury occurred
450 outside the state and is one for which compensation is payable
451 under this chapter, then the final hearing may be held in the
452 county of the employer's residence or place of business, or in
453 any other county of the state that will, in the discretion of
454 the Deputy Chief Judge, be the most convenient for a hearing. At
455 least 15 days before hearing, the claimant's attorney shall file
456 a personal attestation detailing his or her hours to date
457 related to the issues set for hearing. The personal attestation
458 by the claimant's attorney must specifically allocate the hours
459 by each benefit claimed and account for hours relating to
460 multiple benefits in a manner that apportions such hours by
461 percentage, in whole numbers, to each benefit. The final hearing
462 shall be conducted by a judge of compensation claims, who shall,
463 within 30 days after final hearing or closure of the hearing
464 record, unless otherwise agreed by the parties, enter a final
465 order on the merits of the disputed issues. The judge of
466 compensation claims may enter an abbreviated final order in
467 cases in which compensability is not disputed. Either party may
468 request separate findings of fact and conclusions of law. At the
469 final hearing, the claimant and employer may each present
470 evidence with respect to the claims presented by the petition
471 for benefits and may be represented by any attorney authorized
472 in writing for such purpose. When there is a conflict in the
473 medical evidence submitted at the hearing, the provisions of s.
474 440.13 shall apply. The report or testimony of the expert



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475 medical advisor shall be admitted into evidence in a proceeding
476 and all costs incurred in connection with such examination and
477 testimony may be assessed as costs in the proceeding, subject to
478 the provisions of s. 440.13. No judge of compensation claims may
479 make a finding of a degree of permanent impairment that is
480 greater than the greatest permanent impairment rating given the
481 claimant by any examining or treating physician, except upon
482 stipulation of the parties. Any benefit due but not raised at
483 the final hearing which was ripe, due, or owing at the time of
484 the final hearing is waived.

485 (h) To further expedite dispute resolution and to enhance
486 the self-executing features of the system, those petitions filed
487 in accordance with s. 440.192 that involve a claim for benefits
488 of \$5,000 or less ~~shall~~, in the absence of compelling evidence
489 to the contrary, are ~~be~~ presumed to be appropriate for expedited
490 resolution under this paragraph; and any other claim filed in
491 accordance with s. 440.192, upon the written agreement of both
492 parties and application by either party, may similarly be
493 resolved under this paragraph. A claim in a petition of \$5,000
494 or less for medical benefits only or a petition for
495 reimbursement for mileage for medical purposes must ~~shall~~, in
496 the absence of compelling evidence to the contrary, be resolved
497 through the expedited dispute resolution process provided in
498 this paragraph. For purposes of expedited resolution pursuant to
499 this paragraph, the Deputy Chief Judge shall make provision by
500 rule or order for expedited and limited discovery and expedited
501 docketing in such cases. At least 15 days before ~~prior to~~
502 hearing, the parties shall exchange and file with the judge of
503 compensation claims a pretrial outline of all issues, defenses,



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504 and witnesses, including a personal attestation by the
505 claimant's attorney detailing his or her hours to date, on a
506 form adopted by the Deputy Chief Judge, ~~provided that, in no~~
507 ~~event shall~~ such hearing may not be held without 15 days'
508 written notice to all parties. The personal attestation by the
509 claimant's attorney must specifically allocate the hours by each
510 benefit claimed and account for hours relating to multiple
511 benefits in a manner that apportions such hours by percentage,
512 in whole numbers, to each benefit. No pretrial hearing shall be
513 held and no mediation scheduled unless requested by a party. The
514 judge of compensation claims shall limit all argument and
515 presentation of evidence at the hearing to a maximum of 30
516 minutes, and such hearings shall not exceed 30 minutes in
517 length. Neither party shall be required to be represented by
518 counsel. The employer or carrier may be represented by an
519 adjuster or other qualified representative. The employer or
520 carrier and any witness may appear at such hearing by telephone.
521 The rules of evidence shall be liberally construed in favor of
522 allowing introduction of evidence.

523 (j) A judge of compensation claims may not award interest
524 on unpaid medical bills and the amount of such bills may not be
525 used to calculate the amount of interest awarded. Regardless of
526 the date benefits are ~~were~~ initially requested, attorney
527 ~~attorney's~~ fees do not attach under this subsection until 45
528 business ~~30~~ days after the date on which a ~~the carrier or self-~~
529 ~~insured employer receives the~~ petition is filed with the Office
530 of the Judges of Compensation Claims and unless the following
531 conditions are met:

- 532 1. Before the petition is filed, the claimant or the



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533 claimant's attorney, if the claimant is represented by counsel,
534 makes a good faith effort to resolve the dispute as provided in
535 s. 440.192(4); and

536 2. The petition meets the definition of specificity under
537 s. 440.02(40) and includes all items required under s.
538 440.192(2).

539 Section 10. Section 440.34, Florida Statutes, is amended to
540 read:

541 440.34 Attorney ~~Attorney's~~ fees; costs.—

542 (1) (a) A judge of compensation claims may award attorney
543 fees payable to the claimant pursuant to this section to be paid
544 by the employer or carrier. An employer or carrier is not
545 responsible for payment of a fee, gratuity, costs, or other
546 consideration ~~may not be paid~~ for a claimant in connection with
547 any proceedings arising under this chapter, unless approved by
548 the judge of compensation claims or court having jurisdiction
549 over such proceedings. Attorney fees payable by the employer or
550 carrier and ~~Any attorney's fee~~ approved by a judge of
551 compensation claims for benefits secured on behalf of a claimant
552 must equal ~~to~~ 20 percent of the first \$5,000 of the amount of
553 the benefits secured, 15 percent of the next \$5,000 of the
554 amount of the benefits secured, 10 percent of the remaining
555 amount of the benefits secured to be provided during the first
556 10 years after the date the claim is filed, and 5 percent of the
557 benefits secured after 10 years.

558 (b) ~~A The judge of compensation claims shall not approve a~~
559 ~~compensation order, a joint stipulation for lump-sum settlement,~~
560 ~~a stipulation or agreement between a claimant and his or her~~
561 ~~attorney, or any other agreement related to benefits under this~~



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562 ~~chapter which provides for an attorney's fee in excess of the~~
563 ~~amount permitted by this section. The judge of compensation~~
564 ~~claims is not required to approve any retainer agreement between~~
565 ~~the claimant and his or her attorney is not subject to approval~~
566 ~~by a judge of compensation claims, but must be filed with the~~
567 ~~Office of the Judges of Compensation Claims. An attorney~~
568 ~~retained by an injured employee shall, before receiving a fee or~~
569 ~~other consideration from the injured employee, report the~~
570 ~~amounts of such attorney fees to the judge of compensation~~
571 ~~claims having jurisdiction over the claim for benefits based on~~
572 ~~the county in which the accident occurred; or, if the accident~~
573 ~~occurred outside of this state, to the Deputy Chief Judge.~~
574 ~~Notwithstanding s. 440.22, attorney fees are a lien upon~~
575 ~~compensation payable to the claimant The retainer agreement as~~
576 ~~to fees and costs may not be for compensation in excess of the~~
577 ~~amount allowed under this subsection or subsection (7).~~

578 (2)(a) In awarding a claimant's attorney fees payable by
579 the employer or carrier attorney's fee, a the judge of
580 compensation claims shall consider only those benefits secured
581 by the attorney. ~~An Attorney is not entitled to attorney's fees~~
582 are not payable by the employer or carrier for:

583 1. Representation in any issue that was ripe, due, and
584 owing and that reasonably could have been addressed, but was not
585 addressed, during the pendency of other issues for the same
586 injury;

587 2. Claimant attorney hours reasonably related to a benefit
588 upon which the claimant did not prevail; or

589 3. Claimant attorney hours reasonably related to a petition
590 for benefits, if the judge of compensation claims determines



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591 that the claimant or the claimant's attorney did not make a good
592 faith effort to resolve the dispute before filing the petition,
593 regardless of whether the petition is dismissed by the judge of
594 compensation claims, the claimant, or the claimant's attorney.

595 (b) The amount, statutory basis, and type of benefits
596 obtained through legal representation ~~must shall~~ be listed on
597 all ~~attorney~~ ~~attorney's~~ fees awarded by a ~~the~~ judge of
598 compensation claims ~~which are payable by the employer or~~
599 ~~carrier~~. For purposes of this section, the term "benefits
600 secured" does not include future medical benefits to be provided
601 on any date more than 5 years after the date the petition claim
602 is filed. ~~If In the event~~ an offer to settle an issue pending
603 before a judge of compensation claims, including ~~attorney~~
604 ~~attorney's~~ fees ~~as provided for in this section~~, is communicated
605 in writing to the claimant or the claimant's attorney at least
606 30 days ~~before~~ ~~prior to~~ the trial date on such issue, for
607 purposes of calculating the amount of ~~attorney~~ ~~attorney's~~ fees
608 to be taxed against the employer or carrier, the term "benefits
609 secured" ~~includes shall be deemed to include~~ only that amount
610 awarded ~~to the claimant~~ above the amount specified in the offer
611 to settle. If multiple issues are pending before a ~~the~~ judge of
612 compensation claims, ~~such said~~ offer of settlement ~~must shall~~
613 address each issue pending and ~~shall~~ state explicitly whether or
614 not the offer on each issue is severable. The written offer ~~must~~
615 ~~shall~~ also unequivocally state whether or not it includes
616 medical witness fees and expenses and all other costs associated
617 with the claim.

618 (3) If a ~~any~~ party ~~prevails~~ ~~should prevail~~ in any
619 proceedings before a judge of compensation claims or court,



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620 there shall be taxed against the nonprevailing party the
621 reasonable costs of such proceedings, not to include attorney
622 ~~attorney's~~ fees. A claimant is responsible for the payment of
623 her or his own attorney ~~attorney's~~ fees, except that a claimant
624 is entitled to recover attorney fees ~~an attorney's fee~~ in an
625 amount equal to the amount provided for in subsection (1) or
626 subsection (5) ~~(7)~~ from a carrier or employer:

627 (a) Against whom she or he successfully asserts a petition
628 for medical benefits only, if the claimant has not filed or is
629 not entitled to file at such time a claim for temporary or
630 permanent disability, permanent impairment, ~~wage-loss,~~ or death
631 benefits, arising out of the same accident;

632 (b) In a ~~any~~ case in which the employer or carrier files a
633 response to petition denying benefits with the Office of the
634 Judges of Compensation Claims and the injured person has
635 employed an attorney in the successful prosecution of the
636 petition;

637 (c) In a proceeding in which a carrier or employer denies
638 that an accident occurred for which compensation benefits are
639 payable, and the claimant prevails on the issue of
640 compensability; or

641 (d) In cases in which ~~where~~ the claimant successfully
642 prevails in proceedings filed under s. 440.24 or s. 440.28.

643
644 Regardless of the date benefits are ~~were~~ initially requested,
645 attorney ~~attorney's~~ fees do ~~shall~~ not attach under this
646 subsection until 45 business ~~30~~ days after the date on which a
647 ~~the carrier or employer, if self-insured, receives the petition~~
648 that meets the definition of specificity under s. 440.02(40) and



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649 includes all items required under s. 440.192(2) is filed with
650 the Office of the Judges of Compensation Claims. Such attorney
651 fees do not attach unless before the petition was filed, the
652 claimant or the claimant's attorney, if the claimant is
653 represented by counsel, made a good faith effort to resolve the
654 dispute as provided in s. 440.192(4).

655 ~~(4) In such cases in which the claimant is responsible for~~
656 ~~the payment of her or his own attorney's fees, such fees are a~~
657 ~~lien upon compensation payable to the claimant, notwithstanding~~
658 ~~s. 440.22.~~

659 ~~(4)-(5) If any proceedings are had for review of a any~~
660 ~~claim, award, or compensation order before any court, the court~~
661 ~~may, at its discretion, award the injured employee or dependent~~
662 ~~attorney fees payable an attorney's fee to be paid by the~~
663 ~~employer or carrier if the injured employee or dependent~~
664 ~~prevails in the proceeding. The award of attorney fees may not~~
665 ~~exceed an hourly rate of \$150 per hour if the proceeding~~
666 ~~occurred because the employer or carrier disputed the claim,~~
667 ~~award, or compensation order, in its discretion, which shall be~~
668 ~~paid as the court may direct.~~

669 ~~(6) A judge of compensation claims may not enter an order~~
670 ~~approving the contents of a retainer agreement that permits~~
671 ~~placing any portion of the employee's compensation into an~~
672 ~~escrow account until benefits have been secured.~~

673 ~~(5)-(7) If attorney fees are an attorney's fee is owed under~~
674 ~~paragraph (3) (a), the judge of compensation claims may award~~
675 ~~approve an alternative attorney fees payable by the employer or~~
676 ~~carrier, attorney's fee not to exceed \$1,500 and only once per~~
677 ~~accident, based on a maximum hourly rate of \$150 per hour, if~~



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678 the judge of compensation claims expressly finds that the
679 attorney ~~attorney's~~ fee schedule amount provided for in
680 subsection (1), based on benefits secured, results in an
681 effective hourly rate of less than \$150 per hour ~~fails to fairly~~
682 ~~compensate the attorney~~ for disputed medical-only claims as
683 provided in paragraph (3) (a) ~~and the circumstances of the~~
684 ~~particular case warrant such action.~~ Attorney fees payable by
685 the employer or carrier under this subsection are in lieu of,
686 rather than in addition to, any other attorney fees available
687 under this section.

688 Section 11. Paragraph (b) of subsection (6) of section
689 440.491, Florida Statutes, is amended to read:

690 440.491 Reemployment of injured workers; rehabilitation.-

691 (6) TRAINING AND EDUCATION.-

692 (b) When an employee who has attained maximum medical
693 improvement is unable to earn at least 80 percent of the
694 compensation rate and requires training and education to obtain
695 suitable gainful employment, the employer or carrier shall pay
696 the employee additional training and education temporary total
697 compensation benefits while the employee receives such training
698 and education for a period not to exceed 26 weeks, which period
699 may be extended for an additional 26 weeks or less, if such
700 extended period is determined to be necessary and proper by a
701 judge of compensation claims. The benefits provided under this
702 paragraph are shall not be in addition to the maximum number of
703 104 weeks as specified in s. 440.15(2) or s. 440.15(13).

704 However, a carrier or employer is not precluded from voluntarily
705 paying additional temporary total disability compensation beyond
706 that period. If an employee requires temporary residence at or



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707 near a facility or an institution providing training and
708 education which is located more than 50 miles away from the
709 employee's customary residence, the reasonable cost of board,
710 lodging, or travel must be borne by the department from the
711 Workers' Compensation Administration Trust Fund established by
712 s. 440.50. An employee who refuses to accept training and
713 education that is recommended by the vocational evaluator and
714 considered necessary by the department will forfeit any
715 additional training and education benefits and any additional
716 compensation ~~payment for lost wages~~ under this chapter. The
717 carrier shall notify the injured employee of the availability of
718 training and education benefits as specified in this chapter.
719 The Department of Financial Services shall include information
720 regarding the eligibility for training and education benefits in
721 informational materials specified in ss. 440.207 and 440.40.

722 Section 12. This act shall take effect July 1, 2019.

723

724 ===== T I T L E A M E N D M E N T =====

725 And the title is amended as follows:

726 Delete everything before the enacting clause

727 and insert:

728

A bill to be entitled

729

An act relating to workers' compensation; amending s.

730

440.02, F.S.; redefining the term "specificity";

731

amending s. 440.093, F.S.; conforming a provision to

732

changes made by the act; amending s. 440.105, F.S.;

733

revising a prohibition against persons receiving

734

certain fees, consideration, or gratuities under the

735

Workers' Compensation Law; amending s. 440.11, F.S.;



736 deleting an exception from fellow-employee immunities
737 from liability; amending s. 440.15, F.S.; increasing
738 the maximum number of weeks of benefits payable for
739 temporary total disability, temporary partial
740 disability, and permanent impairment benefits;
741 revising the timeframe under which a carrier must
742 provide certain notice to an employee's treating
743 doctor; specifying permanent impairment benefits
744 payable to certain employees who have not reached
745 overall maximum medical improvement within a certain
746 timeframe; requiring that such impairment benefits be
747 credited against subsequently due indemnity benefits;
748 deleting a requirement that temporary disability
749 benefits cease and that the injured worker's permanent
750 impairment be determined after a certain timeframe;
751 creating s. 440.1915, F.S.; requiring injured
752 employees and other claimants to sign and attest to a
753 specified statement relating to the payment of
754 attorney fees before engaging an attorney or other
755 representative for certain purposes; prohibiting such
756 injured employees or claimants from proceeding with a
757 petition for benefits, except pro se, until the
758 signature is obtained; amending s. 440.192, F.S.;
759 revising conditions under which a petition for
760 benefits or portion of the petition must be dismissed
761 by the Office of the Judges of Compensation Claims or
762 the assigned judge of compensation claims; revising
763 the information required in the petition; providing
764 construction; requiring claimants and their attorneys



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765 to make a good faith effort to resolve the dispute
766 before filing a petition; requiring that petitions
767 include evidence demonstrating such good faith effort;
768 authorizing judges of compensation claims to determine
769 if such effort was made; requiring the judge of
770 compensation claims to dismiss the petition, and
771 authorizing the imposition of sanctions, if he or she
772 finds such effort was not made; providing that certain
773 dismissals are without prejudice; specifying
774 timeframes within which a judge of compensation claims
775 must enter an order on certain motions to dismiss;
776 revising conditions under which judges of compensation
777 claims are prohibited from awarding attorney fees;
778 amending s. 440.20, F.S.; providing that certain
779 settlement agreements need not be approved by the
780 judge of compensation claims; revising the information
781 required to be submitted by the parties to such a
782 settlement; revising the timeframe under which a lump-
783 sum settlement amount must be paid; amending s.
784 440.25, F.S.; requiring a claimant's attorney, under
785 certain circumstances and within certain timeframes,
786 to file a specified personal attestation detailing his
787 or her hours to date; revising the timeframe and
788 conditions under which attorney fees attach to certain
789 proceedings; amending s. 440.34, F.S.; authorizing
790 judges of compensation claims to award attorney fees
791 to claimants to be paid by the employer or carrier;
792 specifying applicability of attorney fee provisions to
793 attorney fees payable by employers or carriers;



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794 providing that employers and carriers are not
795 responsible for costs unless approved by the judge of
796 compensation claims or a court having jurisdiction;
797 deleting a prohibition against a judge of compensation
798 claims' approval of agreements providing for attorney
799 fees in excess of certain amounts; requiring that
800 retainer agreements be filed with the office;
801 specifying requirements for attorneys of injured
802 employees in reporting attorney fees; revising
803 attorney fees that are a lien upon payable
804 compensation; deleting a certain limitation on
805 retainer agreements; specifying claimant attorney
806 hours for which attorney fees are not payable by
807 employers or carriers; revising circumstances under
808 which claimants are entitled to recover attorney fees
809 from carriers or employers; revising the timeframe and
810 conditions under which attorney fees attach;
811 specifying a limit on the hourly rates of certain
812 attorney fees awarded to injured employees or
813 dependents; specifying a condition before such
814 attorney fees may be awarded; deleting a prohibition
815 against a judge of compensation claims entering an
816 order approving certain retainer agreements; revising
817 circumstances under which a judge of compensation
818 claims may award alternative attorney fees payable by
819 the carrier or employer; providing construction;
820 amending s. 440.491, F.S.; providing that an employee
821 who refuses certain training and education forfeits
822 any additional compensation, rather than payment for



823 lost wages; conforming a provision to changes made by
824 the act; providing an effective date.