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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
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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,



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.



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



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



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;



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.