

By Senator Perry

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1 A bill to be entitled
2 An act relating to workers' compensation; amending s.
3 440.02, F.S.; redefining the term "specificity";
4 amending s. 440.093, F.S.; conforming a provision to
5 changes made by the act; amending s. 440.105, F.S.;
6 revising a prohibition against persons receiving
7 certain fees, consideration, or gratuities under the
8 Workers' Compensation Law; amending s. 440.11, F.S.;
9 deleting an exception from fellow-employee immunities
10 from liability; amending s. 440.15, F.S.; increasing
11 the maximum number of weeks of benefits payable for
12 temporary total disability, temporary partial
13 disability, and temporary total disability; revising
14 the timeframe under which a carrier must provide
15 certain notice to an employee's treating doctor;
16 specifying permanent impairment benefits payable to
17 certain employees who have not reached overall maximum
18 medical improvement within a certain timeframe;
19 requiring that such impairment benefits be credited
20 against subsequently due indemnity benefits; deleting
21 a requirement that temporary disability benefits cease
22 and that the injured worker's permanent impairment be
23 determined after a certain timeframe; creating s.
24 440.1915, F.S.; requiring injured employees and other
25 claimants to sign and attest to a specified statement
26 relating to the payment of attorney fees before
27 engaging an attorney or other representative for
28 certain purposes; prohibiting such injured employees
29 or claimants from proceeding with a petition for

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30 benefits, except pro se, until the signature is
31 obtained; amending s. 440.192, F.S.; revising
32 conditions under which a petition for benefits or
33 portion of the petition must be dismissed by the
34 Office of the Judges of Compensation Claims or the
35 assigned judge of compensation claims; revising the
36 information required in the petition; providing
37 construction; requiring claimants and their attorneys
38 to make a good faith effort to resolve the dispute
39 before filing a petition; requiring that petitions
40 include evidence demonstrating such good faith effort;
41 authorizing judges of compensation claims to determine
42 if such effort was made; requiring the judge of
43 compensation claims to dismiss the petition, and
44 authorizing the imposition of sanctions, if he or she
45 finds such effort was not made; providing that certain
46 dismissals are without prejudice; specifying
47 timeframes within which a judge of compensation claims
48 must enter an order on certain motions to dismiss;
49 revising conditions under which judges of compensation
50 claims are prohibited from awarding attorney fees;
51 amending s. 440.20, F.S.; providing that certain
52 settlement agreements need not be approved by the
53 judge of compensation claims; revising the information
54 required to be submitted by the parties to such a
55 settlement; revising the timeframe under which a lump-
56 sum settlement amount must be paid; amending s.
57 440.25, F.S.; requiring that the pretrial outline
58 under a certain expedited dispute resolution process

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59 contain a specified personal attestation by the
60 claimant's attorney relating to hours to date;
61 revising the timeframe and conditions under which
62 attorney fees attach to certain proceedings; amending
63 s. 440.34, F.S.; authorizing judges of compensation
64 claims to award attorney fees to claimants to be paid
65 by the employer or carrier; specifying applicability
66 of attorney fee provisions to attorney fees payable by
67 employers or carriers; providing that employers and
68 carriers are not responsible for costs unless approved
69 by the judge of compensation claims or a court having
70 jurisdiction; deleting a prohibition against a judge
71 of compensation claims' approval of agreements
72 providing for attorney fees in excess of certain
73 amounts; requiring that retainer agreements be filed
74 with the office; specifying requirements for attorneys
75 of injured employees in reporting attorney fees;
76 revising attorney fees that are a lien upon payable
77 compensation; deleting a certain limitation on
78 retainer agreements; specifying claimant attorney
79 hours for which attorney fees are not payable by
80 employers or carriers; revising circumstances under
81 which claimants are entitled to recover attorney fees
82 from carriers or employers; revising the timeframe and
83 conditions under which attorney fees attach;
84 specifying a limit on the hourly rates of attorney
85 fees awarded to injured employees or dependents;
86 specifying a condition before such attorney fees may
87 be awarded; deleting a prohibition against a judge of

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88 compensation claims entering an order approving
89 certain retainer agreements; revising circumstances
90 under which a judge of compensation claims may award
91 alternative attorney fees payable by the carrier or
92 employer; providing construction; amending s. 440.491,
93 F.S.; providing that an employee who refuses certain
94 training and education forfeits any additional
95 compensation, rather than payment for lost wages;
96 conforming a provision to changes made by the act;
97 providing an effective date.

98

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

100

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

103 440.02 Definitions.—When used in this chapter, unless the
104 context clearly requires otherwise, the following terms shall
105 have the following meanings:

106 (40) "Specificity," "specific," or "specifically"
107 "Specificity" means, for purposes of determining the adequacy of
108 a petition for benefits under s. 440.192, information on the
109 petition ~~for benefits~~ sufficient to put the employer or carrier
110 on notice of the exact statutory classification and outstanding
111 time period for each requested benefit, the specific amount of
112 each requested benefit, the calculation used for computing the
113 specific amount of each requested benefit, and ~~of benefits being~~
114 requested and includes a detailed explanation of any such
115 benefit ~~benefits~~ received that should be increased, decreased,
116 changed, or otherwise modified. If the petition is for medical

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117 benefits, the information must ~~shall~~ include specific details as
118 to why such benefits are being requested, including details
119 demonstrating that such benefits have specifically been denied
120 by the adjuster responsible for determining whether benefits are
121 payable to the claimant; why such benefits are medically
122 necessary;~~7~~ and why current treatment, if any, is not
123 sufficient. Any petition requesting alternate or other medical
124 care, including, but not limited to, petitions requesting
125 psychiatric or psychological treatment, must specifically
126 identify the physician, as defined in s. 440.13(1), who is
127 recommending such treatment. A copy of a report from such
128 physician making the recommendation for alternate or other
129 medical care must ~~shall~~ also be attached to the petition and
130 must include specific allegations and statements of fact
131 supporting the specific denial by the adjuster handling payment
132 of benefits to the injured employee. A judge of compensation
133 claims may ~~shall~~ not order such treatment if a physician is not
134 recommending such treatment.

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

137 440.093 Mental and nervous injuries.—

138 (3) Subject to the payment of permanent benefits under s.
139 440.15, in no event shall temporary benefits for a compensable
140 mental or nervous injury be paid for more than 6 months after
141 the date of maximum medical improvement for the injured
142 employee's physical injury or injuries, which shall be included
143 in the maximum number of ~~period of 104~~ weeks as provided in s.
144 440.15(2), ~~and~~ (4), and (13). Mental or nervous injuries are
145 compensable only in accordance with the terms of this section.

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146 Section 3. Paragraph (c) of subsection (3) of section
147 440.105, Florida Statutes, is amended to read:

148 440.105 Prohibited activities; reports; penalties;
149 limitations.-

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

153 (c) Except for an attorney retained by an injured employee
154 and receiving a fee or other consideration from the injured
155 employee under contract with the injured employee, it is
156 unlawful for any ~~attorney or other~~ person, in his or her
157 individual capacity or in his or her capacity as a public or
158 private employee, or for any firm, corporation, partnership, or
159 association to receive any fee or other consideration or any
160 gratuity from a person on account of services rendered for a
161 person in connection with any proceedings arising under this
162 chapter, unless such fee, consideration, or gratuity is approved
163 by a judge of compensation claims or by the Deputy Chief Judge
164 of Compensation Claims.

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

167 440.11 Exclusiveness of liability.-

168 (1) The liability of an employer prescribed in s. 440.10
169 shall be exclusive and in place of all other liability,
170 including vicarious liability, of such employer to any third-
171 party tortfeasor and to the employee, the legal representative
172 thereof, husband or wife, parents, dependents, next of kin, and
173 anyone otherwise entitled to recover damages from such employer
174 at law or in admiralty on account of such injury or death,

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175 except as follows:

176 (a) If an employer fails to secure payment of compensation
177 as required by this chapter, an injured employee, or the legal
178 representative thereof in case death results from the injury,
179 may elect to claim compensation under this chapter or to
180 maintain an action at law or in admiralty for damages on account
181 of such injury or death. In such action the defendant may not
182 plead as a defense that the injury was caused by negligence of a
183 fellow employee, that the employee assumed the risk of the
184 employment, or that the injury was due to the comparative
185 negligence of the employee.

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

191 1. The employer deliberately intended to injure the
192 employee; or

193 2. The employer engaged in conduct that the employer knew,
194 based on prior similar accidents or on explicit warnings
195 specifically identifying a known danger, was virtually certain
196 to result in injury or death to the employee, and the employee
197 was not aware of the risk because the danger was not apparent
198 and the employer deliberately concealed or misrepresented the
199 danger so as to prevent the employee from exercising informed
200 judgment about whether to perform the work.

201

202 The same immunities from liability enjoyed by an employer shall
203 extend as well to each employee of the employer when such

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204 employee is acting in furtherance of the employer's business and
205 the injured employee is entitled to receive benefits under this
206 chapter. Such fellow-employee immunities do not apply ~~shall not~~
207 ~~be applicable~~ to an employee who acts, with respect to a fellow
208 employee, with willful and wanton disregard or unprovoked
209 physical aggression or with gross negligence when such acts
210 result in injury or death or such acts proximately cause such
211 injury or death, ~~nor shall such immunities be applicable to~~
212 ~~employees of the same employer when each is operating in the~~
213 ~~furtherance of the employer's business but they are assigned~~
214 ~~primarily to unrelated works within private or public~~
215 ~~employment~~. The same immunity provisions enjoyed by an employer
216 shall also apply to any sole proprietor, partner, corporate
217 officer or director, supervisor, or other person who in the
218 course and scope of his or her duties acts in a managerial or
219 policymaking capacity and the conduct which caused the alleged
220 injury arose within the course and scope of said managerial or
221 policymaking duties and was not a violation of a law, whether or
222 not a violation was charged, for which the maximum penalty which
223 may be imposed does not exceed 60 days' imprisonment as set
224 forth in s. 775.082. The immunity from liability provided in
225 this subsection extends to county governments with respect to
226 employees of county constitutional officers whose offices are
227 funded by the board of county commissioners.

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

232 440.15 Compensation for disability.—Compensation for

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233 disability shall be paid to the employee, subject to the limits
234 provided in s. 440.12(2), as follows:

235 (2) TEMPORARY TOTAL DISABILITY.—

236 (a) Subject to subsections ~~subsection~~ (7) and (13), in case
237 of disability total in character but temporary in quality, 66
238 2/3 or 66.67 percent of the average weekly wages must ~~shall~~ be
239 paid to the employee during the continuance thereof, ~~not to~~
240 ~~exceed 104 weeks~~ except as provided in this subsection, s.
241 440.12 ~~s. 440.12(1)~~, and s. 440.14 ~~s. 440.14(3)~~. Once the
242 employee reaches the maximum number of weeks allowed, or the
243 employee reaches overall ~~the date of~~ maximum medical
244 improvement, whichever occurs earlier, temporary disability
245 benefits must ~~shall~~ cease and the injured worker's permanent
246 impairment must ~~shall~~ be determined.

247 (3) PERMANENT IMPAIRMENT BENEFITS.—

248 (d) After the employee has been certified by a doctor as
249 having reached maximum medical improvement or 6 weeks before the
250 expiration of temporary benefits, whichever occurs earlier, the
251 certifying doctor shall evaluate the condition of the employee
252 and assign an impairment rating, using the impairment schedule
253 referred to in paragraph (b). If the certification and
254 evaluation are performed by a doctor other than the employee's
255 treating doctor, the certification and evaluation must be
256 submitted to the treating doctor, the employee, and the carrier
257 within 10 days after the evaluation. The treating doctor must
258 indicate to the carrier agreement or disagreement with the other
259 doctor's certification and evaluation.

260 1. The certifying doctor shall issue a written report to
261 the employee and the carrier certifying that maximum medical

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262 improvement has been reached, stating the impairment rating to
263 the body as a whole, and providing any other information
264 required by the department by rule. The carrier shall establish
265 an overall maximum medical improvement date and permanent
266 impairment rating, based upon all such reports.

267 2. Within 14 days after the carrier's knowledge of each
268 maximum medical improvement date and impairment rating to the
269 body as a whole upon which the carrier is paying benefits, the
270 carrier shall report such maximum medical improvement date and,
271 when determined, the overall maximum medical improvement date
272 and associated impairment rating to the department in a format
273 as set forth in department rule. If the employee has not been
274 certified as having reached overall maximum medical improvement
275 before the expiration of 254 ~~98~~ weeks after the date temporary
276 disability benefits begin to accrue, the carrier shall notify
277 the treating doctor of the requirements of this section.

278 3. If an employee receiving benefits under subsection (2),
279 subsection (4), or both subsections (2) and (4) has not reached
280 overall maximum medical improvement before receiving the maximum
281 number of weeks of temporary disability benefits described in
282 subsection (13), the employee must receive benefits under this
283 subsection for an injury resulting from the accident in
284 accordance with the estimated impairment rating for the body as
285 a whole; or, if multiple injuries are sustained, in accordance
286 with the estimated combined impairment ratings for the body as a
287 whole in the 1996 Florida Uniform Permanent Impairment Rating
288 Schedule. Impairment benefits received under this subparagraph
289 must be credited against indemnity benefits subsequently due to
290 the employee.

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291 (4) TEMPORARY PARTIAL DISABILITY.—

292 (a) Subject to subsections (6), subsection (7), and (13),
293 in case of temporary partial disability, compensation must ~~shall~~
294 be equal to 80 percent of the difference between 80 percent of
295 the employee's average weekly wage and the salary, wages, and
296 other remuneration the employee is able to earn postinjury, as
297 compared weekly; however, weekly temporary partial disability
298 benefits may not exceed an amount equal to 66 2/3 or 66.67
299 percent of the employee's average weekly wage at the time of
300 accident. In order to simplify the comparison of the preinjury
301 average weekly wage with the salary, wages, and other
302 remuneration the employee is able to earn postinjury, the
303 department may by rule provide for payment of the initial
304 installment of temporary partial disability benefits to be paid
305 as a partial week so that payment for remaining weeks of
306 temporary partial disability can coincide as closely as possible
307 with the postinjury employer's work week. The amount determined
308 to be the salary, wages, and other remuneration the employee is
309 able to earn shall in no case be less than the sum actually
310 being earned by the employee, including earnings from sheltered
311 employment. Benefits are ~~shall be~~ payable under this subsection
312 only if overall maximum medical improvement has not been reached
313 and the medical conditions resulting from the accident create
314 restrictions on the injured employee's ability to return to
315 work.

316 (e) Subject to subsections (6), (7), and (13), such
317 benefits must ~~shall~~ be paid during the continuance of such
318 disability, ~~not to exceed a period of 104 weeks,~~ as provided by
319 this subsection ~~and subsection (2).~~ ~~Once the injured employee~~

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320 ~~reaches the maximum number of weeks, temporary disability~~
321 ~~benefits cease and the injured worker's permanent impairment~~
322 ~~must be determined.~~ If the employee is terminated from
323 postinjury employment based on the employee's misconduct,
324 temporary partial disability benefits are not payable as
325 provided for in this section. The department shall by rule
326 specify forms and procedures governing the method and time for
327 payment of temporary disability benefits for dates of accidents
328 before January 1, 1994, and for dates of accidents on or after
329 January 1, 1994.

330 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee
331 refuses employment suitable to the capacity thereof, offered to
332 or procured therefor, such employee is ~~shall~~ not be entitled to
333 any compensation at any time during the continuance of such
334 refusal unless at any time in the opinion of the judge of
335 compensation claims such refusal is justifiable. Time periods
336 for the payment of benefits in accordance with this section must
337 ~~shall~~ be counted in determining the limitation of benefits as
338 provided for in subsection (13) paragraphs (2) (a), (3) (c), and
339 ~~(4) (b).~~

340 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of
341 benefits received by an employee for temporary total disability
342 payable pursuant to subsection (2), temporary partial disability
343 payable pursuant to subsection (4), and temporary total
344 disability payable pursuant to s. 440.491 may not exceed 260
345 weeks.

346 Section 6. Section 440.1915, Florida Statutes, is created
347 to read:

348 440.1915 Notice regarding payment of attorney fees.—Before

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349 engaging an attorney or other representative for services
350 related to a petition for benefits under s. 440.192 or s.
351 440.25, an injured employee or any other party making a claim
352 for benefits under this chapter through an attorney shall attest
353 with his or her personal signature that he or she has reviewed,
354 understands, and acknowledges the following statement, which
355 must be in at least 14-point bold type: "THE WORKERS'
356 COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES.
357 YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO
358 PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN
359 THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN
360 ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE
361 REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF
362 YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE
363 YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION
364 BEFORE YOU SIGN IT." If the injured employee or other party does
365 not sign or refuses to sign the document attesting that he or
366 she has reviewed, understands, and acknowledges the statement,
367 the injured employee or other party making a claim under this
368 chapter may not proceed with a petition for benefits under s.
369 440.192 or s. 440.25, except pro se, until such signature is
370 obtained.

371 Section 7. Subsections (2), (4), (5), and (7) of section
372 440.192, Florida Statutes, are amended, and subsection (1) of
373 that section is republished, to read:

374 440.192 Procedure for resolving benefit disputes.—

375 (1) Any employee may, for any benefit that is ripe, due,
376 and owing, file with the Office of the Judges of Compensation
377 Claims a petition for benefits which meets the requirements of

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378 this section and the definition of specificity in s. 440.02. An
379 employee represented by an attorney shall file by electronic
380 means approved by the Deputy Chief Judge. An employee not
381 represented by an attorney may file by certified mail or by
382 electronic means approved by the Deputy Chief Judge. The
383 department shall inform employees of the location of the Office
384 of the Judges of Compensation Claims and the office's website
385 address for purposes of filing a petition for benefits. The
386 employee shall also serve copies of the petition for benefits by
387 certified mail, or by electronic means approved by the Deputy
388 Chief Judge, upon the employer and the employer's carrier. The
389 Deputy Chief Judge shall refer the petitions to the judges of
390 compensation claims.

391 (2) Upon receipt of a petition, the Office of the Judges of
392 Compensation Claims, or upon motion, the assigned judge of
393 compensation claims, shall review the ~~each~~ petition and shall
394 dismiss the ~~each~~ petition or any portion of the ~~such a~~ petition
395 which that does not comply with the requirements of this
396 section, does not meet the definition of specificity under s.
397 440.02(40), and does not ~~on its face~~ specifically identify or
398 itemize the following:

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

401 (b) The name, address, and telephone number of the
402 employer.

403 (c) A detailed description of the injury and cause of the
404 injury, including ~~the location of the occurrence and the date or~~
405 dates of the accident and the county in this state or, if the
406 accident occurred outside of this state, the state where the

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407 accident occurred.

408 (d) A detailed description of the employee's job, work
409 responsibilities, and work the employee was performing when the
410 injury occurred.

411 (e) The specific time period for which compensation and the
412 specific classification of compensation were not timely
413 provided.

414 (f) The specific date of maximum medical improvement,
415 character of disability, and specific statement of all benefits
416 or compensation that the employee is seeking. A claim for
417 permanent benefits must include the specific date of maximum
418 medical improvement and the specific date on which such
419 permanent benefits are claimed to begin.

420 (g) All specific travel costs to which the employee
421 believes she or he is entitled, including dates of travel and
422 purpose of travel, means of transportation, and mileage and
423 including the date the request for mileage was filed with the
424 carrier and a copy of the request filed with the carrier.

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

428 (i) The type or nature of treatment care or attendance
429 sought and the justification for such treatment. If the employee
430 is under the care of a physician for an injury identified under
431 paragraph (c), a copy of the physician's request, authorization,
432 or recommendation for treatment, care, or attendance must
433 accompany the petition.

434 (j) The specific amount of compensation claimed and the
435 methodology used to calculate the average weekly wage, if the

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436 average weekly wage calculated by the employer or carrier is
437 disputed. There is a rebuttable presumption that the average
438 weekly wage and corresponding compensation calculated by the
439 employer or carrier is accurate.

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

442 (l) The signed attestation required pursuant to s.
443 440.1915.

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

446
447 The dismissal of any petition or portion of such a petition
448 under this subsection ~~section~~ is without prejudice and does not
449 require a hearing.

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

454 1. A certification by the claimant or, if the claimant is
455 represented by counsel, the claimant's attorney, stating that
456 the claimant, or attorney if the claimant is represented by
457 counsel, has made a good faith effort to resolve the dispute and
458 that the claimant or attorney was unable to resolve the dispute
459 with the carrier, or the employer if self-insured; and

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

462 (b) If the petition is not dismissed under subsection (2),
463 the judge of compensation claims has jurisdiction to determine,
464 in his or her independent discretion, whether a good faith

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465 effort to resolve the dispute was made by the claimant or the
466 claimant's attorney. If the judge of compensation claims
467 determines that the claimant or the claimant's attorney did not
468 make a good faith effort to resolve the dispute before filing
469 the petition for benefits, the judge of compensation claims must
470 dismiss the petition and may impose sanctions to ensure
471 compliance with this subsection, which may include, but are not
472 limited to, assessment of attorney fees payable by the
473 claimant's attorney.

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

479 (b) Upon motion that a petition or a portion of a petition
480 be dismissed for lack of specificity, a judge of compensation
481 claims shall enter an order on the motion, unless stipulated in
482 writing by the parties, within 10 days after the motion is
483 filed, or, if good cause for a hearing is shown, within 20 days
484 after a hearing on the motion. When any petition or portion of a
485 petition is dismissed for lack of specificity under this
486 subsection, the claimant must be allowed 20 days after the date
487 of the order of dismissal in which to file an amended petition.
488 Any grounds for dismissal for lack of specificity under this
489 section which are not asserted within 30 days after receipt of
490 the petition for benefits are thereby waived.

491 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of
492 compensation claims may not award attorney ~~attorney's~~ fees
493 payable by the employer or carrier for services expended or

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494 costs incurred before: ~~prior to~~

495 (a) The filing of a petition that meets the definition of
496 specificity under s. 440.02(40) and that includes all items
497 required under subsection (2); or

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

502 Section 8. Paragraph (c) of subsection (11) of section
503 440.20, Florida Statutes, is amended to read:

504 440.20 Time for payment of compensation and medical bills;
505 penalties for late payment.—

506 (11)

507 (c) Notwithstanding s. 440.21(2), when a claimant is
508 represented by counsel, the claimant may waive all rights to any
509 and all benefits under this chapter by entering into a
510 settlement agreement releasing the employer and the carrier from
511 liability for workers' compensation benefits in exchange for a
512 lump-sum payment to the claimant. The settlement agreement need
513 not be approved ~~requires approval~~ by the judge of compensation
514 claims, and only as to the attorney's fees paid to the
515 ~~claimant's attorney by the claimant.~~ the parties need not submit
516 any information or documentation in support of the settlement,
517 except for as needed to justify the amount of the settlement and
518 the attorney attorney's fees and costs paid by the claimant to
519 the claimant's attorney. Neither the employer nor the carrier is
520 responsible for any attorney attorney's fees relating to the
521 settlement and release of claims under this section. Payment of
522 the lump-sum settlement amount must be made within 14 days after

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523 the date the judge of compensation claims mails the order
 524 approving the settlement allocation's recovery of child support
 525 arrears under paragraph (d) attorney's fees. Any order
 526 entered by a judge of compensation claims ~~approving the~~
 527 ~~attorney's fees as set out in the settlement~~ under this
 528 subsection is not considered to be an award and is not subject
 529 to modification or review. The judge of compensation claims
 530 shall report these settlements to the Deputy Chief Judge in
 531 accordance with ~~the requirements set forth in~~ paragraphs (a) and
 532 (b). Settlements entered into under this subsection are valid
 533 and apply to all dates of accident.

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

536 440.25 Procedures for mediation and hearings.—

537 (4)

538 (h) To further expedite dispute resolution and to enhance
 539 the self-executing features of the system, those petitions filed
 540 in accordance with s. 440.192 that involve a claim for benefits
 541 of \$5,000 or less ~~shall~~, in the absence of compelling evidence
 542 to the contrary, are ~~be~~ presumed to be appropriate for expedited
 543 resolution under this paragraph; and any other claim filed in
 544 accordance with s. 440.192, upon the written agreement of both
 545 parties and application by either party, may similarly be
 546 resolved under this paragraph. A claim in a petition of \$5,000
 547 or less for medical benefits only or a petition for
 548 reimbursement for mileage for medical purposes must ~~shall~~, in
 549 the absence of compelling evidence to the contrary, be resolved
 550 through the expedited dispute resolution process provided in
 551 this paragraph. For purposes of expedited resolution pursuant to

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552 this paragraph, the Deputy Chief Judge shall make provision by
553 rule or order for expedited and limited discovery and expedited
554 docketing in such cases. At least 15 days before ~~prior to~~
555 hearing, the parties shall exchange and file with the judge of
556 compensation claims a pretrial outline of all issues, defenses,
557 and witnesses, including a personal attestation by the
558 claimant's attorney detailing his or her hours to date, on a
559 form adopted by the Deputy Chief Judge, ~~+~~ provided that, ~~in no~~
560 ~~event shall~~ such hearing may not be held without 15 days'
561 written notice to all parties. The personal attestation by the
562 claimant's attorney must specifically allocate the hours by each
563 benefit claimed and account for hours relating to multiple
564 benefits in a manner that apportions such hours by percentage,
565 in whole numbers, to each benefit. No pretrial hearing shall be
566 held and no mediation scheduled unless requested by a party. The
567 judge of compensation claims shall limit all argument and
568 presentation of evidence at the hearing to a maximum of 30
569 minutes, and such hearings shall not exceed 30 minutes in
570 length. Neither party shall be required to be represented by
571 counsel. The employer or carrier may be represented by an
572 adjuster or other qualified representative. The employer or
573 carrier and any witness may appear at such hearing by telephone.
574 The rules of evidence shall be liberally construed in favor of
575 allowing introduction of evidence.

576 (j) A judge of compensation claims may not award interest
577 on unpaid medical bills and the amount of such bills may not be
578 used to calculate the amount of interest awarded. Regardless of
579 the date benefits are ~~were~~ initially requested, attorney
580 ~~attorney's~~ fees do not attach under this subsection until 45

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581 business ~~30~~ days after the date on which a ~~the carrier or self-~~
582 ~~insured employer receives the petition~~ is filed with the Office
583 of the Judges of Compensation Claims and unless the following
584 conditions are met:

585 1. Before the petition is filed, the claimant or the
586 claimant's attorney, if the claimant is represented by counsel,
587 makes a good faith effort to resolve the dispute as provided in
588 s. 440.192(4); and

589 2. The petition meets the definition of specificity under
590 s. 440.02(40) and includes all items required under s.
591 440.192(2).

592 Section 10. Section 440.34, Florida Statutes, is amended to
593 read:

594 440.34 Attorney ~~Attorney's~~ fees; costs.—

595 (1) (a) A judge of compensation claims may award attorney
596 fees payable to the claimant pursuant to this section to be paid
597 by the employer or carrier. An employer or carrier is not
598 responsible for payment of a fee, gratuity, costs, or other
599 ~~consideration may not be paid~~ for a claimant in connection with
600 any proceedings arising under this chapter, unless approved by
601 the judge of compensation claims or court having jurisdiction
602 over such proceedings. Attorney fees payable by the employer or
603 carrier and ~~Any attorney's fee~~ approved by a judge of
604 compensation claims for benefits secured on behalf of a claimant
605 must equal ~~to~~ 20 percent of the first \$5,000 of the amount of
606 the benefits secured, 15 percent of the next \$5,000 of the
607 amount of the benefits secured, 10 percent of the remaining
608 amount of the benefits secured to be provided during the first
609 10 years after the date the claim is filed, and 5 percent of the

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610 benefits secured after 10 years.

611 (b) A ~~The judge of compensation claims shall not approve a~~
612 ~~compensation order, a joint stipulation for lump-sum settlement,~~
613 ~~a stipulation or agreement between a claimant and his or her~~
614 ~~attorney, or any other agreement related to benefits under this~~
615 ~~chapter which provides for an attorney's fee in excess of the~~
616 ~~amount permitted by this section. The judge of compensation~~
617 ~~claims is not required to approve any retainer agreement between~~
618 ~~the claimant and his or her attorney~~ is not subject to approval
619 by a judge of compensation claims, but must be filed with the
620 Office of the Judges of Compensation Claims. An attorney
621 retained by an injured employee and receiving a fee or other
622 consideration from the injured employee under contract with the
623 injured employee shall report the amounts of such attorney fees
624 to the judge of compensation claims having jurisdiction over the
625 claim for benefits based on the county in which the accident
626 occurred; or, if the accident occurred outside of this state, to
627 the Deputy Chief Judge. Notwithstanding s. 440.22, attorney fees
628 are a lien upon compensation payable to the claimant ~~The~~
629 ~~retainer agreement as to fees and costs may not be for~~
630 ~~compensation in excess of the amount allowed under this~~
631 ~~subsection or subsection (7).~~

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

637 1. Representation in any issue that was ripe, due, and
638 owing and that reasonably could have been addressed, but was not

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639 addressed, during the pendency of other issues for the same
640 injury;

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

643 3. Claimant attorney hours reasonably related to a petition
644 for benefits, if the judge of compensation claims determines
645 that the claimant or the claimant's attorney did not make a good
646 faith effort to resolve the dispute before filing the petition,
647 regardless of whether the petition is dismissed by the judge of
648 compensation claims, the claimant, or the claimant's attorney.

649 (b) The amount, statutory basis, and type of benefits
650 obtained through legal representation ~~must~~ shall be listed on
651 all ~~attorney~~ attorney's fees awarded by a ~~the~~ judge of
652 compensation claims which are payable by the employer or
653 carrier. For purposes of this section, the term "benefits
654 secured" does not include future medical benefits to be provided
655 on any date more than 5 years after the date the petition claim
656 is filed. ~~If In the event~~ an offer to settle an issue pending
657 before a judge of compensation claims, including attorney
658 attorney's fees ~~as provided for in this section~~, is communicated
659 in writing to the claimant or the claimant's attorney at least
660 30 days before ~~prior to~~ the trial date on such issue, for
661 purposes of calculating the amount of attorney attorney's fees
662 to be taxed against the employer or carrier, the term "benefits
663 secured" includes ~~shall be deemed to include~~ only that amount
664 awarded ~~to the claimant~~ above the amount specified in the offer
665 to settle. If multiple issues are pending before a ~~the~~ judge of
666 compensation claims, such ~~said~~ offer of settlement must ~~shall~~
667 address each issue pending and ~~shall~~ state explicitly whether or

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668 not the offer on each issue is severable. The written offer must
 669 ~~shall~~ also unequivocally state whether or not it includes
 670 medical witness fees and expenses and all other costs associated
 671 with the claim.

672 (3) If a ~~any~~ party prevails ~~should prevail~~ in ~~any~~
 673 proceedings before a judge of compensation claims or court,
 674 there shall be taxed against the nonprevailing party the
 675 reasonable costs of such proceedings, not to include attorney
 676 ~~attorney's~~ fees. A claimant is responsible for the payment of
 677 her or his own attorney ~~attorney's~~ fees, except that a claimant
 678 is entitled to recover attorney fees ~~an attorney's fee~~ in an
 679 amount equal to the amount provided for in subsection (1) or
 680 subsection (5) ~~(7)~~ from a carrier or employer:

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

686 (b) In a ~~any~~ case in which the employer or carrier files a
 687 response to petition denying benefits with the Office of the
 688 Judges of Compensation Claims and the injured person has
 689 employed an attorney in the successful prosecution of the
 690 petition;

691 (c) In a proceeding in which a carrier or employer denies
 692 that an accident occurred for which compensation benefits are
 693 payable, and the claimant prevails on the issue of
 694 compensability; or

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

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697
698 Regardless of the date benefits are ~~were~~ initially requested,
699 attorney attorney's fees do shall not attach under this
700 subsection until 45 business 30 days after the date on which a
701 the carrier or employer, if self-insured, receives the petition
702 that meets the definition of specificity under s. 440.02(40) and
703 includes all items required under s. 440.192(2) is filed with
704 the Office of the Judges of Compensation Claims. Such attorney
705 fees do not attach unless before the petition was filed, the
706 claimant or the claimant's attorney, if the claimant is
707 represented by counsel, made a good faith effort to resolve the
708 dispute as provided in s. 440.192(4).

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

713 ~~(4)(5)~~ If any proceedings are had for review of a any
714 claim, award, or compensation order before any court, the court
715 may, at its discretion, award the injured employee or dependent
716 attorney fees payable an attorney's fee to be paid by the
717 employer or carrier, not to exceed an hourly rate of \$150 per
718 hour, but only if the employer or carrier disputes the claim,
719 award, or compensation order and the injured employee or
720 dependent prevails in the dispute in its discretion, which shall
721 be paid as the court may direct.

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

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726 ~~(5)(7)~~ If attorney fees are ~~an attorney's fee is~~ owed under
727 paragraph (3) (a), the judge of compensation claims may award
728 ~~approve an alternative~~ attorney fees payable by the employer or
729 carrier, ~~attorney's fee~~ not to exceed \$1,500 and only once per
730 ~~accident,~~ based on a maximum hourly rate of \$150 per hour, if
731 the judge of compensation claims expressly finds that the
732 ~~attorney~~ attorney's fee schedule amount provided for in
733 subsection (1), based on benefits secured, results in an
734 effective hourly rate of less than \$150 per hour ~~fails to fairly~~
735 ~~compensate the attorney~~ for disputed medical-only claims as
736 provided in paragraph (3) (a) ~~and the circumstances of the~~
737 ~~particular case warrant such action.~~ Attorney fees payable by
738 the employer or carrier under this subsection are in lieu of,
739 rather than in addition to, any other attorney fees available
740 under this section.

741 Section 11. Paragraph (b) of subsection (6) of section
742 440.491, Florida Statutes, is amended to read:

743 440.491 Reemployment of injured workers; rehabilitation.—

744 (6) TRAINING AND EDUCATION.—

745 (b) When an employee who has attained maximum medical
746 improvement is unable to earn at least 80 percent of the
747 compensation rate and requires training and education to obtain
748 suitable gainful employment, the employer or carrier shall pay
749 the employee additional training and education temporary total
750 compensation benefits while the employee receives such training
751 and education for a period not to exceed 26 weeks, which period
752 may be extended for an additional 26 weeks or less, if such
753 extended period is determined to be necessary and proper by a
754 judge of compensation claims. The benefits provided under this

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755 paragraph are ~~shall~~ not ~~be~~ in addition to the maximum number of
756 ~~104~~ weeks as specified in s. 440.15(2) or s. 440.15(13).
757 However, a carrier or employer is not precluded from voluntarily
758 paying additional temporary total disability compensation beyond
759 that period. If an employee requires temporary residence at or
760 near a facility or an institution providing training and
761 education which is located more than 50 miles away from the
762 employee's customary residence, the reasonable cost of board,
763 lodging, or travel must be borne by the department from the
764 Workers' Compensation Administration Trust Fund established by
765 s. 440.50. An employee who refuses to accept training and
766 education that is recommended by the vocational evaluator and
767 considered necessary by the department will forfeit any
768 additional training and education benefits and any additional
769 compensation ~~payment for lost wages~~ under this chapter. The
770 carrier shall notify the injured employee of the availability of
771 training and education benefits as specified in this chapter.
772 The Department of Financial Services shall include information
773 regarding the eligibility for training and education benefits in
774 informational materials specified in ss. 440.207 and 440.40.

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