

# CHAPTER 77-290

## Senate Bill No. 343

AN ACT relating to workmen's compensation; amending s. 440.02(2) (d), Florida Statutes, redefining the term "employee" for the purposes of the Workmen's Compensation Law to exclude real estate salesmen or agents who perform services for remuneration solely by way of commission; adding subsections (20) and (21) to s. 440.02, Florida Statutes; providing definitions; amending s. 440.09(3), Florida Statutes; providing conditions under which a presumption exists that an injury was occasioned primarily by the intoxication of the employee; amending s. 440.13(1), Florida Statutes, and adding subsection (4); requiring the filing of certain medical reports with the Bureau of Workmen's Compensation; providing for furnishing certain reports to opposing parties and to the injured employee or his attorney; providing for transportation costs for injured employee; amending s. 440.15(10) (c), Florida Statutes, and adding paragraphs (1) (f) and (g) and subsection (11) thereto; providing for reporting of earnings and income by the injured employee; providing for release of social security disability information; providing that certain benefits not be paid for any period during which the employee refuses to report or authorize release of information; providing for a reduction in certain benefits for an employee who is also receiving unemployment compensation; amending s. 440.20(5) and (10), Florida Statutes, and adding new subsections (11) and (13); providing conditions under which penalties for nonpayment of compensation are deemed to be waived; providing for investigations with regard to stipulation that a proposed final settlement not be subject to modification or review; specifying use of certain tables; providing for approval of discharge of employer's liability for future payments of compensation by advance payments; providing for reimbursement of employer after certain payments by carrier; amending s. 440.25(3) (c) and (4) (b), Florida Statutes, and adding new paragraph (4) (c) thereto;

providing for delivery of copies of compensation orders; requiring the appellant to prepare a record on appeal rather than a transcript of the proceedings in an appeal from a compensation order; requiring the appellant to deposit the amount of the estimated cost of preparing such record with the judge of industrial claims; providing for dismissal for failure to comply; providing exceptions; amending s. 440.26, Florida Statutes; removing the presumption that the injury was not occasioned primarily by the intoxication of the injured employee; amending s. 440.29(1), Florida Statutes; providing a procedure whereby an injured worker may be relieved of the cost of preparing a record on appeal: amending s. 440.34, Florida Statutes; providing for attorney's fee based on a percentage of the amount of benefits secured; providing factors to be considered by a judge of industrial claims in modifying such fee; amending s. 440.37, Florida Statutes; providing a penalty for obtaining or denying benefits by a false statement; amending s. 440.39(3) (a), Florida Statutes, relating to actions against third party tort-feasors; providing that the employer or carrier shall recover from the judgment 100 percent of what it has paid, after deduction of costs; adding paragraph (d) to s. 120.52(1), Florida Statutes, 1976 Supplement, and creating s. 440.021, Florida Statutes; providing that in the adjudication of workmen's compensation claims the Industrial Relations Commission and judges of industrial claims are exempt from the Administrative Procedure Act; amending ss. 120.54(15) and 120.57(1) (a), Florida Statutes, 1976 Supplement, relating to certain exemptions under said act for said commission and judges; adding subsection (4) to section 627.311, Florida Statutes; providing an effective date.

Be it Enacted by the Legislature of the State of Florida:

Section 12. Paragraph (d) is added to subsection (1) of section 120.52, Florida Statutes, 1976 Supplement, to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(d) Neither the Industrial Relations Commission nor judges of industrial claims shall, in the adjudication of workmen's compensation claims, be considered an agency or part of an agency for the purposes of this act.

Section 13. Subsection (15) of section 120.54, Florida Statutes, 1976 Supplement, is amended to read:

120.54 Rulemaking; adoption procedures.--

(15) The rulemaking provisions of this chapter shall not apply to ~~the judges of industrial claims or compensation appeals referees.~~

Section 14. Paragraph (a) of subsection (1) of section 120.57, Florida Statutes, 1976 Supplement, is amended to read:

120.57 Decisions which affect substantial interests.--The provisions of this section shall apply in all proceedings in which the substantial interests of a party are determined by an agency. Unless waived by all parties, subsection (1) shall apply whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) shall apply in all other cases.

(1) FORMAL PROCEEDINGS.--

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1. Hearings before agency heads or a member thereof other than an agency head or a member of an agency head within the Department of Professional and Occupational Regulation;

2. Hearings before the Industrial Relations Commission in unemployment compensation appeals, ~~judges of industrial claims~~, unemployment compensation appeals referees, and the Public Service Commission or its examiners;

3. Hearings regarding drivers' licensing pursuant to chapter 322;
4. Hearings conducted within the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida;
5. Hearings in which the division is a party, in which case an attorney assigned by the Administration Commission shall be the hearing officer;
6. Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units; and
7. Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit, as provided in s. 447.307.