

DATE: March 30, 1979

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1. <u>Deffenbaugh</u>	<u>Martin</u>	1. <u>Com.</u>	<u>Fav/CS.</u>
2. _____	_____	2. _____	_____
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SUBJECT:
Workmen's Compensation

BILL NO. AND SPONSOR:
CS/SB 188 by
First Engrossed
Commerce Committee
and Senator MacKay

I. SUMMARY:

A. Present Situation and Effect of Proposed Changes:

Due to the complexity of the numerous substantive and procedural changes made by this bill to the present workmen's compensation law, a section-by-section comparison will be used for present situation and effect of proposed changes. Every section which is not listed below either changes "workmen's" to "workers", or is a technical change made necessary by Section 104 which transfers the Bureau of Workmen's Compensation to the Department of Insurance.

Section 2.

This section amends s. 440.02(2) (b), Florida Statutes, to exclude from the definition of "employee" any officer of a corporation who elects to be exempt from coverage. Although current law allows an officer to elect to be exempt from coverage, the Bureau of Workmen's Compensation includes all officers, whether exempt or not, when counting the number of employees to determine if there are three or more employees and, therefore, required coverage.

Includes within the definition of independent contractor musicians and other entertainers.

Provides definitions for "self-insurer", "group self-insurer's fund", "permanent impairment", and "date of maximum medical improvement".

Section 4.

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Presently, employees of a subcontractor are deemed to be employees of the general contractor for workmen's compensation purposes unless the subcontractor secures payment of compensation. This section limits the responsibility of the general contractor for payment of compensation to the employees of an unsecured subcontractor only to subcontractors who have three or more employees.

Section 6.

Presently, compensation may not exceed an amount per week which is equal to 66 2/3% of the statewide average weekly wage. This section amends s. 440.12(2) to raise this maximum weekly benefit to 100% of the statewide average weekly wage. This section also provides that monthly wage-loss benefits, (see Section 4), shall not exceed 4.3 times the maximum weekly benefit.

Section 7.

Present law limits fees to health care providers to the fee schedule adopted by the Division. This bill limits such fees to the health care provider's usual and customary charge, or to the maximum fee schedule charge, whichever is less. This bill also limits hospital fees to the lowest charge currently assessed in the community in which the hospital is located.

Section 8.

Section 440.14 presently outlines the steps that must be taken in order to determine the average weekly wages of an injured employee. A new subsection is added by this section providing that the average monthly wages of an employee at the time of injury shall be 4.3 times the average weekly wage.

Section 9.

This section includes the bill's most significant changes to current law by amending s. 440.15, Florida Statutes, which determines the compensation payable for all disabilities. (It should be noted that the maximum benefits established in s. 440.12 applies to all the disability benefits listed below. [See Section 2]). For permanent total disability, present law provides that

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60% of the employee's average weekly wages shall be paid to the employee during the continuance of such disability. This section amends s. 440.15(1) (a) to raise the compensation rate for permanent total disability to 66 2/3% of the employee's average weekly wage. It also amends the definition of permanent total disability in s. 440.15(1) (b) to state that no compensation shall be payable for permanent total disability if the employee is engaged in, or is physically capable of engaging in, any form of gainful employment for which he is reasonably suited by education, training or experience. If, however, the employee loses both hands, both arms, both feet, both legs, both eyes, or any two thereof, this section states that this will constitute permanent total disability unless there is conclusive proof of a substantial earning capacity. It further amends paragraph (d), which presently pays a permanently and totally disabled employee who reestablishes an earning capacity by employment, 60% of the difference between pre-injury earnings and post-injury earnings. As amended a permanently and totally disabled employee who reestablishes an earning capacity shall be paid wage-loss benefits. (See below).

For temporary total disability, present law provides that 60% the employees average weekly wages shall be paid to the employee during the continuance of the disability, not to exceed 350 weeks. This section amends s. 440.15 (2) (a) to raise the compensation rate for temporary total disability to 66 2/3% of the employee's average weekly wages. Present law states that temporary disability benefits shall be paid while the employee is engaged in a rehabilitation program pursuant to s. 440.49(1), (2), or (3), not to exceed 40 weeks. This section amends s. 440.15(2) (b) to remove this 40 week limitation. (However, time limitations on the employee's entitlement to rehabilitation are provided in s. 440.49, as amended.)

For permanent partial disability, present law pays an employee 60% of his average weekly wage for the number of weeks provided by the statutory schedule of injuries. For non-scheduled injuries, the number of weeks is determined by the physical impairment rating or the diminution of wage-earning capacity rating, whichever is greater, (with significant thresholds at 10% and 50% disability). This section amends s. 440.15(3) so that impairment benefits are paid to an employee who suffers amputation, total loss or loss of use of an eye, or serious disfigurement, and wage-loss benefits are paid to an employee who suffers any physical impairment and

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as a result loses at least 20% of his wages. Impairment benefits are strictly a function of the physical impairment rating and are paid in one lump sum. The Division is required to adopt an impairment rating schedule which may incorporate the AMA Guides. Wage-loss benefits are equal to 80% of the difference between 80% of pre-injury wages and post-maximum medical improvement wages. (Use of this formula results in the 20% threshold mentioned above.) The right to wage-loss benefits terminates after 350 weeks, age 65, or the passage of two years without at least three consecutive months of compensable wage-loss, whichever is sooner. For injuries occurring after July 1, 1981, the right to wage-loss benefits terminates after 525 weeks, age 65, or, for impairments of 25% or less, the passage of two years without at least three consecutive months of compensable wage loss, and for impairment in excess of 25%, the passage of four years without at least three consecutive months of compensable wage loss.

For temporary partial disability, present law pays a worker 60% of the difference between pre-injury wages and "wage-earning capacity" after the injury. This section amends s. 440.15(4) so that a worker is paid 66 2/3% of the difference between pre-injury wages and the salary, wages, and other remuneration the employee is able to earn after the injury.

Amends s. 440.15(5) to provide the compensation payable when a subsequent injury occurs.

Present law reduces compensation, under certain circumstances, when the employee receives federal disability benefits. This section amends s. 440.15(10) to also make this reduction when such federal benefits are paid to the employee's dependents.

Present law reduces compensation for temporary total or permanent total disability by the amount of unemployment compensation payable. Section 440.15(11) would be amended to preclude compensation for temporary total or permanent total disability if unemployment compensation is being received. This section also provides that unemployment compensation shall be primary and wage-loss benefits secondary.

Section 11.

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Amends s. 440.185(7) to raise the number of days from 10 to 21 within which a carrier must notify the Division of a new insurance policy.

Requires the employee to report any compensable wage-loss to the carrier or employer, if self-insured. Also requires the Division to provide rules therefor and to verify reports of wage loss upon request.

Section 12.

Present law, [s. 440.13(3) (d) and s. 440.19(1) (a)], bars the right to compensation and the right to remedial attention unless a claim therefor is filed within 2 years after the injury, after the last payment of compensation, or after the last remedial treatment furnished by the employer without an award. This section bars the right to compensation unless a request for hearing therefor is filed within 2 years after the injury or after the last payment of compensation. This section bars the right to remedial attention unless a request for hearing therefor is filed within 2 years after the injury or after the last remedial attention furnished by the employer, except that no statute of limitations applies to the right for remedial attention relating to a prosthetic device.

Present law requires that a claim filed with the Division state the "nature of the claim". This section replaces claim filing with a "request for hearing" and requires that this filed request state the specific compensation benefit which is due and not paid.

Requires employers and carries to provide certain information to an employee or his attorney whether or not a request for hearing has been filed.

Section 13.

Provides time periods for payments of compensation.

Reduces the current 20% penalty for a late payment to 10%.

Prohibits lump sum settlements prior to 6 months after the date of maximum medical improvement. Requires that the employer be notified of, and have the right to appear and testify at a settlement hearing, and

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prohibits a settlement from being approved unless it is in the best interests of the employee and the employer.

Section 14.

Provides when a request for hearing may be filed. Requires that a hearing be held within 90 days of a filed request.

Section 15.

Provides that certain presumptions shall be made in any proceeding for enforcement of a claim for compensation, except as otherwise provided in the chapter.

Section 16.

Relates the procedure for taking depositions to a "request for hearing", rather than claim filing. (See Section 6).

Section 18.

Relates the "assessment" of costs to a "request for hearing", rather than claim filing. (See Section 6).

Section 19.

If a claimant employs an attorney in the successful prosecution of a claim, present law adds an attorney's fee to the award for compensation. With respect to claims for benefits other than medical benefits, 75% is paid by the employer or carrier and 25% is paid by the claimant. This section requires the claimant to pay 100% of his attorney's fees on all claims for benefits except that a carrier is responsible for payment of the attorney's fee in cases where the carrier acted in bad faith or where the carrier denied coverage on a compensable claim. The attorney's fee schedule is replaced with a requirement that all fees be approved as reasonable by the judge of industrial claims.

Section 21.

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Provides the Division with the authority to require proof of competent personnel as a condition to self-insure. Additional authority is provided to the Division in regulating self-insurers.

Section 23.

Creates a Division of Workmen's Compensation within the Department of Insurance.

Section 24.

Present law places the responsibility of rehabilitation of seriously injured workers on the Division. This section places such responsibility on the employer and carrier. Time limits are placed on the rehabilitation period to which the employee is entitled.

Provides the amount of reimbursement from the Special Disability Trust Fund to which an employer is entitled for excess impairment or wage-loss benefits paid and for excess compensation paid for permanent total disability, death, temporary disability, and medical benefits.

Removes the \$3,000 minimum limitation on the amount reimbursable to an employer.

Section 28.

Requires the Division to adopt rules requiring monetary reserves to be maintained by group self-insurer's funds and provides the Division with authority to adopt additional rules governing the operation of such funds.

Section 31.

Requires that an experience rating plan provide employers who pay less than \$750 per year in premiums with the option of being experience rated.

Section 32.

Prohibits excessive profits for workmen's compensation insurance and provides for rebates therefor.

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Section 33.

Requires all insurance carriers writing workmen's compensation for employers within Florida to have a claims adjuster within the state.

Section 34.

Establishes "utilization review" and "peer review" mechanisms to evaluate the necessity, quality, and cost of medical services provided by practitioners paid pursuant to Chapter 440.

Section 103.

Creates a Division of Workmen's Compensation within the Department of Insurance to enforce the provisions of Chapter 440.

Section 104.

Transfers the Bureau of Workmen's Compensation to the Department of Insurance, except for rehabilitation responsibilities which remain in the Department of Labor and Employment Security.

Section 106.

Creates an advisory Workmen's Compensation Rating Bureau within the Department of Insurance.

Section 107.

Mandates a 21% rate decrease.

Section 108.

Severability provision.

Section 109.

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Provides that Chapter 440 shall not stand repealed on July 1, 1979, but is readopted as amended.

Section 110.

Repeals paragraph (d) of subsection (3) of section 440.13 and section 562.132. The repealed paragraph, as amended, is renumbered as paragraph (b) of subsection (1) of section 440.19. (See Section 6). The repealed section, as amended, is renumbered as subsection 1 of paragraph (d) of subsection (2) of section 440.02.

Section 111.

Effective date of June 30, 1979.

III. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The consulting actuaries hired by the Joint Committee on Workmen's Compensation estimated that the proposed legislation could be expected to reduce premium rates by 20 -25% from an otherwise adequate rate level. It was the opinion of the actuaries that further reductions in premium rates would be likely to occur as experience develops. The improved experience would reflect factors too intangible or uncertain to calculate presently, such as decreased use of medical specialists and fewer controverted claims. As reported to the Division of Labor, total premiums for workmen's compensation insurance totaled over \$779 million in 1978.

The anticipated reduction in premiums reflects a reduction in the total amount of benefits expected to be paid out. However, the majority of disabled employees would receive an increase in compensation benefits due to the increased rates of compensation for temporary total and permanent total disability and due to the increase in the maximum benefit. The decrease in benefits would affect those workers who suffer a permanent partial disability and experience a slight or no loss in wages. Whether a worker with a

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permanent partial disability who suffers a substantial wage loss would receive higher compensation benefits under present law or under this bill would depend upon the disability rating he would receive under present law. Statistics for 1978 compiled by the Bureau of Workmen's Compensation show that only 2.6% of all work injuries and 18% of all disabling injuries in that year resulted in a permanent partial disability, yet over 44% of the total benefits paid in 1978 went to these workers.

The health care cost containment provisions contained in Section 7 of the bill are expected to reduce or, at least, limit the increase in the cost of medical care to injured workers. The cost savings that might result is not quantifiable at this time.

B. Government:

One aspect of the fiscal impact of this bill is the 20 -25% anticipated decrease in compensation costs described in A. above. This decrease in costs should apply to the compensation paid out by the state to injured state employees. According to a spokesman for the Division of Risk Management, compensation paid out in 1978 totaled approximately \$5 1/2 million. A 20 - 25% reduction would amount to a savings of approximately \$1.1 - \$1.4 million to the state as an employer.

Transferring the Bureau of Workmen's Compensation to the Department of Insurance should not result in any additional costs to the state.

According to a spokesman for the Department of Insurance, creating a Workmen's Compensation Rating Bureau within the Department would require an additional 11 positions. These new positions along with the data processing equipment needed would amount to first year cost of approximately \$545,000. Of this amount roughly \$75,000 would be non-recurring. Of the remaining \$470,000 in recurring annual expenses, approximately \$240,000 would be charged to insurers for on-site audits, leaving a total recurring expense to the state of \$230,000.

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There are likely to be increased administrative costs because of the removal of the \$3,000 minimum limitation on reimbursement to employers from the Special Disability Trust Fund. (See Section 15). The removal of the limitation will increase the number of claims filed by employers with the Fund and will correspondingly increase the costs involved in the Fund's defense of these claims. The increase in costs is not quantifiable at this time. Another reason for increased costs is the bill's requirement that the Division implement "utilization review" of medical care provided pursuant to Chapter 440. (See Section 20). This mechanism necessitates use of a computer-operated system to identify physicians who exceed established parameters for utilization of services. It is not possible to estimate the cost of implementing such a program, but the costs should be substantially reduced if the Division contracts with a qualified entity which already operates a utilization review mechanism.