Session Law 83-305

Florida Senate & House of Representatives
A bill to be entitled
An act relating to workers' compensation;
amending s. 440.021, Florida Statutes, changing
the types of communications exempt from
administrative privilege; amending s.
440.11(3), Florida Statutes, reiterating the
exclusiveness of liability provisions of
workers' compensation laws; amending s. 440.13,
Florida Statutes, 1982 Supplement, transferring
certain definitions and defining "medically
necessary"; requiring treatment and care for
employees to be medically necessary; requiring
health care providers and facilities to provide
certain treatment information; restricting the
payment of services provided by such providers
and facilities; providing for a payment
schedule; abolishing an advisory committee;
amending s. 440.15(3)(b), (9), and (10)(b),
Florida Statutes, 1982 Supplement, changing
employee entitlement to wage-loss benefit to
employees receiving certain retirement
benefits; providing for the effect of wage-loss
benefit reductions upon certain minimum
compensation provisions and upon temporary
partial benefits; amending s. 440.185(2), (4),
(5), and (10), Florida Statutes, changing
certain notice of claims procedures; providing
for obtaining medical records; amending s.
440.19, Florida Statutes, including claims for
rehabilitative services within claims
procedures; providing for amended claims;

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matter to the deputy commissioner for determination pursuant
to s. 440.25(3) and (4). Such action of the division is
exempt from the provisions of chapter 120.

Section 2. Subsection (3) is added to section 440.11,
Florida Statutes, to read:

440.11 Exclusiveness of liability.--

(3) Notwithstanding the provisions of s. 624.155, the
liability of a carrier to an employee or to anyone entitled to
bring suit in the name of the employee shall be as provided in
this chapter, which shall be exclusive and in place of all
other liability.

Section 3. Section 440.13, Florida Statutes, 1982
Supplement, is amended to read:

440.13 Medical services and supplies; penalty for
violations; limitations.--

(1) As used in this section:

(a) "Utilization review" means the initial evaluation
of appropriateness in terms of both the level and the quality
of health care and health services provided a patient, based
on medically accepted standards. Such evaluation shall be
accomplished by means of a system which identifies the
utilization of medical services, based on medically accepted
standards, and which refers instances of possible
inappropriate utilization to the division for referral to a
peer review committee or other appropriate action.

(b) "Peer review" means an evaluation by a peer review
committee, after utilization review, of the appropriateness,
quality and cost of health care and health services provided a
patient, based on medically accepted standards.
may reasonably request as part of its investigation of a claim
filed by an injured worker for benefits under this chapter.

Nothing in this subsection shall relieve the employer of its
responsibility to provide custodial care by nonprofessionals
who are not health care providers, including members of the
family of the injured employee, whenever the claimant requires
assistance to perform activities of daily living.

(3) If an injured employee objects to the medical
attendance furnished by the employer, it shall be the duty of
the employer to select another physician to treat the injured
employee unless a deputy commissioner determines that a change
in medical attendance is not for the best interests of the
injured employee; however, a deputy commissioner may at any
time, for good cause shown, in the deputy commissioner's
discretion, order a change in such remedial attention, care,
or attendance. It shall be unlawful for any employer or
representative of any insurance company or insurer to coerce
or attempt to coerce a sick or injured employee in the
selection of a physician, surgeon, or other attendant or
remedial treatment, nursing or hospital care, or any other
service that the sick or injured employee may require; and any
employer or representative of any insurance company or insurer
who violates this provision is guilty of a misdemeanor of the
second degree, punishable as provided in s. 775.082 or s.
775.083. The health care provider or health care facility
providing services pursuant to this section shall be paid for
the services solely by the employer or its insurance carrier.

(4)(a) All fees and other charges for such
treatment or service, including treatment or service provided
by any hospital or other health care provider or health care
facility, shall be limited to such charges as prevail in the

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(1) The deputy commissioner may preserve and enforce order during any such proceeding; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; examine witnesses, and do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office. Whenever a law requires an order of a court of competent jurisdiction for the obtention of medical or hospital records, an order of a deputy commissioner entered for such purposes shall be deemed to be an order of a court of competent jurisdiction.

Section 11. Subsection (5) of section 440.34, Florida Statutes, is amended to read:

440.34 Attorney's fees; costs; penalty for violations.--

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the court may allow an increasing the attorney's fee fees, in its discretion, which shall be paid as the court may direct.

Section 12. Paragraphs (b), (c), (e), (g), and (j) of subsection (3) of section 440.45, Florida Statutes, are amended to read:

440.45 Deputy commissioners; Chief Commissioner.--

(3) The deputy commissioners shall be within the Department of Labor and Employment Security under the secretary of that department. To assist the secretary in the administration of the deputy commissioners, there shall be created the position of Chief Commissioner within the secretary's office. The Chief Commissioner shall not be
A bill to be entitled
An act relating to workers' compensation;
amending s. 440.02(1)(d) and (2), Florida Statutes, redefining "employment" and "volunteer"; amending s. 440.021, Florida Statutes, changing the types of communications exempt from administrative procedures; amending s. 440.11(3), Florida Statutes, repealing the exclusiveness of liability provisions of workers' compensation laws; amending s. 440.13, Florida Statutes, 1982 Supplement, transferring certain definitions and defining "medically necessary"; requiring treatment and care for employees to be medically necessary; requiring health care providers and facilities to provide certain treatment information; restricting the payment of services provided by such providers and facilities; providing for a payment schedule; abolishing an advisory committee; amending s. 440.15(3)(b), (9), and (10)(b), Florida Statutes, 1982 Supplement, changing employee entitlement to wage-loss benefit to employees receiving certain retirement benefits; providing for the effect of wage-loss benefit reductions upon certain minimum compensation provisions and upon temporary partial benefits; providing for a reduction of benefits to persons eligible for municipal pension plan benefits; amending s. 440.185(2), (4), and (5), Florida Statutes, changing certain notice of claims procedures; providing

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be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the division shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the division does not agree with the protest, it shall refer the matter to the deputy commissioner for determination pursuant to s. 440.25(3) and (4). Such action of the division is exempt from the provisions of chapter 120.

Section 3. Subsection (3) is added to section 440.11, Florida Statutes, to read:

440.11 Exclusiveness of liability.--

(3) Notwithstanding the provisions of s. 624.155, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in this chapter, which shall be exclusive and in place of all other liability.

Section 4. Section 440.13, Florida Statutes, 1982 Supplement, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.--

(1) As used in this section:

(a) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. Such evaluation shall be accomplished by means of a system which identifies the utilization of medical services, based on medically accepted

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remedial treatment, nursing or hospital care, or any other
service that the sick or injured employee may require; and any
employer or representative of any insurance company or insurer
who violates this provision is guilty of a misdemeanor of the
second degree, punishable as provided in s. 775.082 or s.
775.083. The health care provider or health care facility
providing services pursuant to this section shall be paid for
the services solely by the employer or its insurance carrier,
except for payments from third parties who have been
determined to be liable for such payment.

(a) All fees and other charges for such
treatment or service, including treatment or service provided
by any hospital or other health care provider or health care
facility, shall be limited to such charges as prevail in the
state same community for similar treatment of injured persons
of like standard of living and shall be subject to rules
adopted by the division, which shall annually incorporate a
schedule of maximum reimbursement allowances for such treatment or service as determined by a
three-member panel, consisting of the Secretary of Labor and
Employment Security, the Insurance Commissioner, and the state
medical consultant of the Division of Workers' Compensation.
The schedule shall have statewide application and shall be
uniform throughout the state. An individual health care
provider shall be paid either his usual and customary charge
for a treatment or service or the maximum reimbursement
allowance charge, whichever is less. In determining the
prevailing charges for the schedule, the panel shall first
approve the body of medical and hospital data which it finds
representative of charges for such treatment. Using the
approved body of data when arrayed, the panel shall establish

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depositions before any designated individual competent to administer oaths; examine witnesses, and do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office. Whenever a law requires an order of a court of competent jurisdiction for the obtention of medical or hospital records, an order of a deputy commissioner entered for such purposes shall be deemed to be an order of a court of competent jurisdiction.

Section 12. Subsection (5) of section 440.34, Florida Statutes, is amended to read:

440.34 Attorney's fees; costs; penalty for violations.--

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the court may award the injured employee or dependent an attorney's fee to be paid by the employer or carrier allowed increase-the-attorney's-fees, in its discretion, which shall be paid as the court may direct.

Section 13. Subsection (5) of section 440.38, Florida Statutes, 1982 Supplement, is amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.--

(5) All insurance carriers authorized to write workers' compensation insurance in this state shall make available, at the written request option of the employer, an insurance policy containing a coinsurance provision which shall bind the carrier to pay 80 percent, and the employer to pay 20 percent, of the benefits due to an employee for an injury compensable under this chapter, up to the amount of $2,500 or $5,000. One hundred percent of the medical benefits above $2,500 or $5,000, as the case may be, due to an employee

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reporters, persons preparing transcripts, or and clerks of courts of this state for like services.

Section 11. Subsection (1) of section 440.33, Florida Statutes, is amended to read:

440.33 Powers of deputy commissioners.--

(1) The deputy commissioner may preserve and enforce order during any such proceeding; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, examine witnesses, and do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office. Whenever a law requires an order of a court of competent jurisdiction for the obtaining of medical or hospital records, an order of a deputy commissioner entered for such purposes shall be deemed to be an order of a court of competent jurisdiction.

Section 12. Subsection (5) of section 440.34, Florida Statutes, is amended to read

440.34 Attorney's fees; costs; penalty for violations.--

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the court may award the injured employee or dependent an attorney's fee to be paid by the employer or carrier allowed or increase the attorney's fees, in its discretion, which shall be paid as the court may direct.

Section 13. Subsection (5) of section 440.38, Florida Statutes, 1982 Supplement, is amended to read:

CODING Words in struck through type are deletions from existing law, words underlined are additions
(2) Any retired justice of the Supreme Court or retired judge of a district court of appeal or circuit or county court assigned to temporary duty set as judicial see in any of said courts, pursuant to Art V of the State Constitution, shall be compensated as follows:

(a) Any such justice or judge shall be paid $100 for each day or portion of a day that such justice or judge is assigned to temporary duty set as judicial service.

(b) Necessary travel expense incident to the performance of duties required by assignment of such justice or judge to temporary duty set as judicial service shall be paid by the state in accordance with the provisions of s 121.061.

(c) If any judge becomes 70 during his term of office, the Chief Justice may appoint that Judge to a temporary duty position for the remainder of that term at full salary, which salary shall be funded from the circuit judges' salary account.

(d) Payments required under this section shall be made from moneys to be appropriated for this purpose.

Amendment to Senate Bill 1277:

On motion by Senator Scott, by two-thirds vote HB 473 as amended was read the third time by title, passed and certified to the House. The vote on passage was Yeas—33

Barron Gagstens Langley Rehm
Beard Gordon Malchon Scott
Caster Grant Mann Stuart
Childrens D Grizzle Maxwell Thomas
Childrens W D Henderson McPherson Thurman
Crawford Hill Meek Vogt
Dunn Jenne Myers
Fov Jennings Neal
Frank Johnston Plummer

Nays—1

Carlucci Hair Weinstern

Consideration of SB 249 was deferred.

On motion by Senator Thomas, by two-thirds vote—

HB 1277—A bill to be entitled An act relating to workers' compensation, amending s 440120(7), (9), (12), and (13)(c), Florida Statutes, changing late compensation payment penalties; changing the persons who may approve certain advance payments, authorizing lump sum future medical expense payments under certain circumstances; providing for certain reports of lump sum settlements, increasing the discount factor of lump sum payments; amending s 44023(3)(b) and (d) and (4)(b), Florida Statutes, transferring certain claim duties to the Chief Commissioner; changing provisions relating to claims costs of indigents; amending s 44029(2), Florida Statutes, changing procedures relating to the reporting of hearings; amending s 44033(1), Florida Statutes, providing the effect of certain orders of deputy commissioners, amending s 44044(6), Florida Statutes, clarifying judicial authority to award attorney's fees on appeal, amending s 44038(6), Florida Statutes, 1982 Supplement, deleting a restriction upon the issuance of policies not containing a cancellation provision; amending s 44039(3)(a), Florida Statutes, imposing a pro rata share of certain costs upon employers and carriers recovering from third party payments, amending s 440 46(3)(b), (e), (g), and (h), Florida Statutes, providing for recommendations of removal of deputy commissioners from office, amending s 44049(1)(b) and (e) and (2)(c) and (f), Florida Statutes, authorizing the Division of Workers' Compensation to approve rehabilitation service providers used by carriers, providing standards and exceptions; providing fees for certain listing, providing for certain employer reimbursement with respect to liability for certain permanent injuries, amending s 44057(1), Florida Statutes, increasing the maximum liability for employer participants under liability pooling agreements, repealing s 440 02(13), Florida Statutes, which defines "registered mail", repealing s 440 56(7), Florida Statutes, which provides for a full-time administrator of industrial safety, providing an effective date.

July 2, 1983

The Committee on Commerce recommended the following amendments which were moved by Senator Thomas and adopted:

Amendment 1—On page 17, line 25, after the period (.) insert: It shall also be the burden of the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his industrial accident, is due to physical limitations related to his accident and not because of economic conditions or the unavailability of employment.

Amendment 2—On page 19, between lines 14 and 15, insert:

(4) TEMPORARY PARTIAL DISABILITY—

(a) In case of temporary partial disability, benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in s 44012(2). It shall also be the burden of the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his industrial accident, is due to physical limitations related to his accident and not because of economic conditions or the unavailability of employment. The compensation shall be equal to 95 percent of the difference between 85 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn, as compared on a weekly basis, however, the weekly wage-loss benefit shall not exceed an amount equal to 69 1/2 percent of the employee's average weekly wage at the time of injury. In order to simplify the comparison of the premuiy average weekly wage with the salary, wages, and other remuneration the employee is able to earn, the division may by rule provide for the modification of the weekly comparison so as to coincide as closely as possible with the injured worker's pay periods.

(b) The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, the salary, wages, and other remuneration the employee is able to earn shall be deemed to be the amount which would have been earned if the employee did not limit his income or accepted appropriate employment. Whenever a wage-loss benefit as set forth in paragraph (a) may be paid, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury.

(c) Such benefits shall be paid during the continuance of such disability, not to exceed a period of 5 years.

Amendment 3—On page 39, between lines 22 and 23, insert:
JOURNALS OF THE SENATE

Section 11. Subsection (1) of section 440.38, Florida Statutes, is amended to read

440.38 Security for compensation insurance carriers and self-insurers—

(1) Every employer shall secure the payment of compensation under this chapter.

(b) By entering into a contract with a public utility under an approved utility provider self-insured program set forth in §440.571 as effect as of July 1, 1983. The division shall adopt rules to implement this paragraph.

(9) Employee eligible for benefits under this chapter and federal old-age, survivors, and disability insurance act—

(a) Weekly compensation benefits payable under this chapter for disability resulting from injuries to an employee who becomes eligible for benefits under 42 U.S.C §423 shall be reduced to an amount whereby the sum of such compensation benefits payable under this chapter and such total benefits otherwise payable for such period to the employee and his dependents, had such employee not been entitled to benefits under this chapter, under 42 U.S.C. §423 and 402, does not exceed 80 percent of the employee's average weekly wage. However, this provision shall not operate to reduce an injured worker's benefits under this chapter. If any compensation benefit as claimed by a self-insured carrier under this chapter exceeds the benefit to which the injured worker would be entitled under the Federal Act, the excess amount shall be reduced proportionately to the extent that the Federal benefit exceeds the amount of compensation benefits payable to the injured worker by reason of this chapter and all other compensation benefits payable to the injured worker under this chapter.
(b) If the provisions of 42 U.S.C. s 424(a) are amended to provide for a reduction or increase of the percentage of average current earnings that the sum of compensation benefits payable under this chapter and the benefits payable under 42 U.S.C. s 423 and s 409 can equal, the amount of the reduction of benefits provided in this subsection shall be reduced or increased accordingly.

(c) No disability compensation benefits payable for any week, including those benefits provided by paragraph (1)(e), shall be reduced pursuant to this subsection until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. s 423 and s 409 and the employee has begun receiving such social security benefit payments. The employee shall, upon demand by the division, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to him and authorize the Division of Employment Security to release unemployment compensation information relating to him, in accordance with rules to be promulgated by the division prescribing the procedure and manner for requesting the authorization and for compliance by the employee. Neither the division nor the employer or carrier shall make any payment of benefits for total disability or those additional benefits provided by paragraph (1)(e) for any period during which the employee willfully fails or refuses to authorize the release of information in the manner and within the time prescribed by said rules. The authority for release of disability information granted by an employee under this paragraph shall be effective for a period not to exceed 12 months, such authority to be renewable as the division may prescribe by rule.

Senator Thomas moved the following amendment which was adopted:

Amendment 11—On page 52, line 6, strike "October 1, 1983" and insert "October 1, 1984".

The Committee on Commerce recommended the following amendments which were moved by Senator Thomas and adopted:

Amendment 12—In title, on page 1, lines 18 and 19, strike "providing for a payment schedule".

Amendment 13—In title, on page 1, line 21, after "1982 Supplement," insert "eliminating certain unavailability of employment as a factor in wage-loss calculations;"

Amendment 14—In title, on page 1, line 27, after "benefits," insert "limiting, applicability of benefits for temporary partial disability;"

Amendment 15—In title, on page 2, line 20, after Florida Statutes," insert "requiring certain orders of deputy commissioners;"

Amendment 16—In title on page 39, strike all of lines 19 and 20 and insert Section 12. Section (3) and (5) of section 440.34, Florida Statutes, are amended to read:

On motion by Senator Thomas, by a two-thirds vote HB 1277, as amended, was read the third time by title, passed and carried to the House. The vote on passage was:

Yes—96

Barron Frank Johnston Neal
Bierend Gristeen Kirkpatrick Plummer
Carlucci Girardeau Langley Rehm
Carrier Grant Malcom Scott
Caster Grant Margolis Stuart
Childers, D. Grizzle Martin Thomas
Childers, W.D. Hair Maxwell Thomas
Crawford Hill McPherson Thurman
Dunn Jenne Meek Vogt
Fox Jennings Myers Weinstien

Nay—None

On motion by Senator Langley, the Senate reconsidered the vote by which CS for HB 829 as amended passed this day.

Pursuant further consideration of CS for SB 829 as amended, on motion by Senator Langley, the rules were waived and by a two-thirds vote HB 769 was withdrawn from the Committee on Judiciary-Civil.

On motion by Senator Langley—
December 10, 1982

Mr. Wyatt Martin  
Staff Director  
House Commerce Committee  
Room 322, The Capitol  
Tallahassee, Florida 32301

Dear Mr. Martin:

Attached are two proposals submitted by the W. C. Advisory Council (Ref. CH 440.44 F. S.) in response to the request from Mr. Fred Tygart, Chairman of the Advisory Committee to Insurance/Commerce and Workers' Compensation Committee.

Proposal #8 from the Advisory Council is identical to the proposal #8 (draft) submitted by the Department of Labor and Employment Security with the exception of the composition of the 3-member panel (Ref. CH 440.13, F.S.). The Department of Labor and Employment Security has not taken a position on proposal #32(a).

Sincerely,

Mike Hale, Chairman  
W. C. Advisory Council

MH:gm

Attachments
Proposal for Change to the Workers' Compensation Law

1. Brief Problem Statement.

-Section 440.13, Florida Statutes has had only piecemeal revisions since its inception in 1935. During the past two years development and promulgation of an adequate fee schedule have been subverted by imprecise, outmoded and undefined provisions in 440.13. The ability to properly monitor and control medical costs and review potential abusers requires extensive revision of 440.13.

2. Problem Discussion and Supporting Statistics.

Major problem areas are as follows:

-Use of "usual and customary" and "prevailing" charges and "community" (which are not defined) and "like standard of living" (which is potentially discriminating) as underlying concepts in setting reimbursements for medical costs.

-Imprecisely and improperly combining health care providers such as physicians with institutions such as hospitals.

-Imprecise use of terms "charges" and "fees" to mean the same thing as reimbursement limitations.

-Inability to develop an equitable and administratively reasonable method of reimbursing hospitals (see b. above).

3. Specific Legislative Changes Proposed.

-Establish uniform definitions for: physicians, health care providers, health care facility, and medical necessity. Self explanatory.

-Limit peer review to physicians. Physicians are the only providers who may order services and thus generate the actual cost of treatment.

-Allow administrative action other than peer review. In cases where a full fledged peer review is not necessary expert consultants can serve the same purpose at lower cost. $150. vs. $1,500.

-Limit services to those medically necessary. Controls program costs by not allowing reimbursement for "luxury" or patient convenience items or experimental procedures.

-Establish Division's right to obtain records. Self explanatory.
-Hold patient harmless from collection of medical costs above fee schedule limitations. Current law does not specifically state that patient cannot be billed for the difference between the provider's charges and fee schedule limitations.

-Requires physicians and facilities to submit their usual charges for Workers' Compensation patients. This will prevent providers from inflating their charges for Workers' Compensation patients.

-Delete "like standard of living". Define "community". Defines "prevailing, usual and customary" or initiate other concepts upon which to develop a reimbursement methodology.

-Clarify language relating to "fees", "charges" and introduces term "allowances". "Fees" and "charges" are currently used to mean the same thing as reimbursement. Clarify terms.

-Give Division the authority to prohibit abusers of Workers' Compensation system from participating if peer review recommends this action. Self explanatory.

-440.13(3)(d) - change "as used in this subsection" to "as used in this paragraph". Self explanatory.

4. Potential Impacts of Legislative Change.

-All entities which provide Workers' Compensation medical care will be clearly delineated as will their status subject to the fee schedule. Imprecise working in the past has allowed physical therapists to remain outside the fee schedule costing the program thousands of dollars.

-By defining medical necessity and limiting medical services to those meeting the definitions, expenditures for "frills" or "patient comfort" items can be limited. When the program identifies a provider who habitually abuses the system for personal gain, the right of suspending such a provider's participation will prevent expenditures of money for unnecessary services and remove the necessity of conducting expensive peer review activities for subsequent abuses.
440.13 Medical services and supplies; penalty for violations; limitations. --

(1) As used in this section:

(a) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. Such evaluation is accomplished by means of a system which identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the division for referral to a peer review committee or other appropriate action.

(b) "Peer review" means an evaluation by a peer review committee, after utilization review, of the appropriateness, quality and cost of health care and health services provided a patient, based on medically accepted standards.

(c) "Peer review committee" means a committee composed of physicians licensed under the same authority as the physician who rendered the services being reviewed.

(d) "Physician" means a physician licensed under Chapter 458, an osteopath licensed under Chapter 459, a chiropractor licensed under Chapter 460, a podiatrist licensed under Chapter 461, an optometrist licensed under Chapter 463, or a dentist licensed under Chapter 466.

(e) "Health care provider" means a physician as defined in this section or any recognized practitioner providing skilled services pursuant to the prescription of or under the supervision or direction of a physician.
(23) If an injured employee objects to the medical attendance furnished by the employer, it shall be the duty of the employer to select another physician to treat the injured employee unless a deputy commissioner determines that a change in medical attendance is not for the best interests of the injured employee; provided that a deputy commissioner may at any time, for good cause shown, in the deputy commissioner's discretion, order a change in such remedial attention, care, or attendance. It shall be unlawful for any employer or representative of any insurance company or insurer to coerce or attempt to coerce a sick or injured employee in the selection of a physician, surgeon, or other attendant or remedial treatment, nursing or hospital care, or any other service that the sick or injured employee may require; and any employer or representative of any insurance company or insurer who violates this provision shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The health care provider or health care facility providing services pursuant to this section shall seek payment for said services solely from the employer or its insurance carrier.

(34) (a) All fees and other charges for such treatment, drugs, medically related items, or service, provided to an injured employee pursuant to this section shall be limited to those fees and charges which the hospital health care facility or health care provider normally and usually charges for such treatment, medicines, medical supplies, durable medical equipment, orthoses, prostheses, and medically necessary apparatus to other third party payors, insurance or government programs including
Notice of
COMMITTEE MEETING
House of Representatives

April 7, 1983

Property & Casualty Insurance subcommittee of
the Committee on Commerce

will meet in Committee Room 317 Capitol at 8:15-10:30 a.m.
on April 11, 1983 to consider:

PCB 83-24 - Workers' compensation - Advisory Committee
on Workers' Compensation recommendations

I certify this notice was received in the
Office of the Sergeant at Arms at 7:14 a.m., on April 7, 1983.

[Signature]
Sergeant at Arms

I certify this notice was filed by me in the Office of the Sergeant at Arms and
the Office of the Clerk on April 7, 1983 and copies have been sent to the
introducers of the bills listed theron as required by House Rules 6.2 and 6.6.

[Signature]
Committee Secretary
House Commerce Committee
Subcommittee on Property and Casualty Insurance
Subcommittee Meeting - April 11, 1983
8:15 a.m. - Room 317 Capitol

8:30 Meeting begins

8:30 PCB 83-24 - Workers' Compensation - Advisory Committee

8:37 Fred Tygart - Workers' Compensation Advisory Committee - Chairman

8:50 Thomas Carroll - Workers' Compensation Advisory Committee

8:56 Richard Sicking - Workers' Compensation Advisory Committee

9:02 Mike Hale - Division of Workers' Compensation

9:03 Ben Johnson, M.D. - Medical Consultant, Division of Workers' Compensation

Al Frieron - Self

9:15 Mike Hale

9:20 TAPE 1 SIDE B

9:27 Ben Johnson, M.D.

9:31 Fred Tygart

9:35 James Richards, M.D. - Florida Medical Association

9:54 Mike Hale

10:10 TAPE 2 SIDE A

10:10 Mary Ann Stiles - Associated Industries

10:11 Eric Tilton - Florida Academy of Trial Lawyers

10:25 Jon Shebel - Associated Industries

10:30 RISE

COPY

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FLORIDA STATE ARCHIVES
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R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 4/4 Carton 433
The Committee on ______ offered the following amendment:

Amendment On page 33, line 20, strike "allow an or-increase-the attorney's fee fees"

and insert: award the injured employee or dependent an attorney's fee to be paid by the employer or carrier allow-or-increase-the-attorney's fees

Mr. ______ moved the adoption of the amendment, which was adopted.

Form H-30 (1979)
The Committee on

offered the following amendment:

Amendment On page line , strike

"allow an increase the attorney's fee fees"

Award the injured employee or dependent an attorney's fee to be paid by the self-insured employer or carrier allow increase the attorney's fees

Mr. moved the adoption of the amendment, which was adopted.

which failed of adoption.
<table>
<thead>
<tr>
<th>Year</th>
<th>Session Law No.</th>
<th>Prime Sponsor</th>
<th>Committee Ref.</th>
<th>Previous versions?</th>
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<td>Commerce</td>
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### Committee Records

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<td>11 P 58 24 (1-71) House file</td>
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### Senate/House Journals

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### Tape Recordings

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### Other Documentation

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<tr>
<td>1. Registered Mail Definition</td>
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<td>2. Computation of Average Weekly Wage</td>
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<td>6. Time Period for Filing a Wage Loss Claim</td>
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<td>8. Employer's Social Security Number</td>
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<td>9. Claim Dismissal</td>
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<td>10. Minimum Penalty</td>
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<td>11. Advance Payments</td>
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<td>12. Venue (2)</td>
<td>Fav.</td>
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<td>13. Reporting to Chief Commissioner</td>
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<td>15. Recording of Proceedings</td>
<td>Fav.</td>
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<td>16. Appellate Attorney Fees</td>
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<td>17. Title Change - Judges of Industrial Claims (3)</td>
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<td>18. Authority of Chief Commissioner</td>
<td>Fav., as amend.</td>
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<td>19. Second Injury Fund</td>
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<td>20. Determination of MMI (2)</td>
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<td>29. Medical Records</td>
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<td>34. Co-insurance</td>
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<tr>
<td>36. (and 27.) Penalties for Late Payment</td>
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<tr>
<td>37. Rehabilitation Standards</td>
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<td>40. Standards for Safety Programs</td>
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</tbody>
</table>
21. Permanent Total Supplement - Social Security Offset
23. Termination of Wage-Loss Benefits (2)
26. Statute of Limitations for Physicians
28. Physician Exemption From Malpractice
33. Applicability of Insurance Code Civil Remedy
35. Subrogation
38. Failure to Provide Rehabilitation - Withdrawn
39A. Physical Impairment Prerequisite to Rehabilitation
39B. Job Placement as Substitute for Rehabilitation
39C. Choice of Rehabilitation
46. (and 7) Advisory Opinions
47. "Washout" Settlements (5)

VERY CONTROVERSIAL

22. Impairment Rating Standards (2)
24. Election of Pension Plans
25. Lien on Employers for Penalty
30. Recoupment by Carrier of Attorney Fees
30A. Employer Payment of Attorney Fees
30B. Standards for Recovery of Attorney Fees
31. Attorney Fees - Self-Insurers
32. Attorney Fees - Medical Claims
41. Elimination of Employer Immunity
42. Medical Fee Schedule
43A. Increased Impairment Benefits
43B. Time Period for Payment of Impairment Benefits
44. Wage-Loss Formula
45. Wage-Loss - Unavailability of Work Due to Economic Conditions (4)
48A. $100/Day Penalty for Late Payment

48B. Emergency Hearings

48C. Payment of Benefits After Final Order

48D. Anti-coercion Statute

48E. Uninsured Employer Fund

48F. Penalty for Late Payment

49. No Assessment of Attorney Fees

50. Increase Attorney Fee Schedule

51. Award of Attorney Fees in More Cases (2)

52. Comments From Council Members
# BILL ACTION REPORT

C3-75: File with Secretary of Senate)

OMMITTEE ON Commerce

DATE June 2, 1983

IME 12 Noon

LACE Room "A", Senate Building

OTHER COMMITTEE REFERENCES: (In order shown)

FINAL ACTION:
- Favorably with 15 amendments
- Favorably with Committee Substitute
- Unfavorably

OTHER: Temporarily Passed
- Reconsidered
- Not Considered

The vote was:

<table>
<thead>
<tr>
<th>FINAL BILL VOTE</th>
<th>SENATORS</th>
<th>Scott-</th>
<th>Scott-</th>
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<th>Scott-</th>
<th>Scott-</th>
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<tbody>
<tr>
<td>Aye</td>
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TOTAL | X | X | X | X | X | X |

Aye | Nay | Aye | Nay | Aye | Nay | Aye | Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (XX)
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance (XX)
BHILL ACTION REPORT (Continued)

(To be used for additional amendments and motions)

COMMITTEE ON Commerce

The Vote Was:

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<tr>
<th>SENATORS</th>
<th>Scott-- Amend. #6</th>
<th>Scott-- Amend. #7</th>
<th>Scott-- Amend. #8</th>
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<td>Aye</td>
<td>Nay</td>
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<td>GIRARDEAU, Arnett E.</td>
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<td>HENDERSON, Warren S.</td>
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<td>JENNINGS, Toni</td>
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TOTAL: X X X X X X X

Aye   | Nay   | Aye   | Nay   | Aye   | Nay   | Aye   | Nay   | Aye   | Nay   | Aye   | Nay   |
The Vote Was:

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<th>Scott-- Amend. #14</th>
<th>Scott-- Amend. #15</th>
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<tr>
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SENATE AMENDMENT

SB _____
HB 1277

Senator... moved the following Amendment... which was adopted:

Amendment #1

On page ..., line ..., strike after the period

and insert:

It shall also be the burden of the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his industrial accident, is due to physical limitation related to his accident and not because of economic conditions or the unavailability of employment.

CODING Words in struck through type are deletions from existing law, words underlined are additions.

Amendment No. ___, taken up by committee: Adopted *
* Offered by ___, Failed -

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/___)
SENATE AMENDMENT

SB ___

HB 1277

Senator..................moved the following Amendment...........which was adopted: which failed:

Amendment #2

On page ...19....., between lines..14 & 15., strike

and insert:

(4) TEMPORARY PARTIAL DISABILITY.--

(a) In case of temporary partial disability, benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in s. 440.12(2). It shall also be the burden of the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his industrial accident, is due to physical limitation related to his accident and not because of economic conditions or the unavailability of employment. The compensation shall be equal to 95 percent of the difference between 85 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn, as compared on a weekly basis; however, the weekly wage-loss benefits shall not exceed an amount equal to 66 2/3 percent of the employee's average weekly wage at the time of injury. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn, the division may by rule provide for the modification of the weekly comparison so
as to coincide as closely as possible with the injured 
worker's pay periods.

(b) The amount determined to be the salary, wages, and 
other remuneration the employee is able to earn shall in no 
case be less than the sum actually being earned by the 
employee, including earnings from sheltered employment. In 
the event the employee voluntarily limits his income or fails 
to accept employment commensurate with his abilities, the 
salary, wages, and other remuneration the employee is able to 
earn shall be deemed to be the amount which would have been 
earned if the employee did not limit his income or accepted 
appropriate employment. Whenever a wage-loss benefit as set 
forth in paragraph (a) may be payable, the burden shall be on 
the employee to establish that any wage loss claimed is the 
result of the compensable injury.

(c) Such benefits shall be paid during the continuance 
of such disability, not to exceed a period of 5 years.
Amendment #3

On page ....39..., between lines..22-23..., strike

and insert:

(3) If the claimant should prevail in any proceedings before a deputy commissioner or court, there shall be taxed against the employer the reasonable costs of such proceedings, not to include the attorney's fees of the claimant. A claimant shall be responsible for the payment of his own attorney's fees, except that a claimant shall be entitled to recover a reasonable attorney's fee from a carrier or employer:

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

(b) In cases where the deputy commissioner issues an order finding that a carrier has acted in bad faith with regard to handling an injured worker's claim and the injured worker has suffered economic loss. For the purposes of this paragraph, "bad faith" means conduct by the carrier in the handling of a claim which amounts to fraud; malice; oppression; or willful, wanton, or reckless disregard of the
rights of the claimant. Any determination of bad faith shall be made by the deputy commissioner through a separate fact-finding proceeding. The deputy commissioner shall issue a separate order which shall expressly state the specific findings of fact upon which the determination of bad faith is based; or

(c) In a proceeding where a carrier or employer denies that an injury occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability.

In the situations set forth in paragraph (b), the payment of such attorney's fees shall not be recouped, directly or indirectly, by any carrier in the rate base, the premium, or any rate filing.
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #4

On page 55, between lines 27 & 28, strike

and insert:

(7) (a) The term "carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes self-insurers.

(b) The term "self-insurer" means:

1. Any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) or (6) as an individual self-insurer;

2. Any employer who has secured payment of compensation through a group self-insurer pursuant to s. 440.57;

3. Any group self-insurer established pursuant to s. 440.57.

4. A public utility as defined in s. 364.02 or s. 366.02, that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.57.
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment $5

On page ..., between lines 15 & 16, strike and insert:

(d) When an application for an advance payment in excess of $2,000 is opposed by the employer or carrier, it shall be heard by a deputy commissioner after giving the interested parties not less than 10 days' notice of such hearing by mail, unless such notice is waived. In his discretion, the deputy commissioner may have an investigation of the matter made by the Rehabilitation Section of the division, in which event the report and recommendation of said section will be deemed a part of the record of the proceedings. If the deputy commissioner finds that such advance payment is for the best interests of the person entitled to compensation, will not materially prejudice the rights of the employer and carrier, and is reasonable under the circumstances of the case, he may order the same paid. Provided, however, in no event shall any such advance payment under this paragraph be granted for a period in excess of $7,500 or twenty-six (26) weeks of benefits in any forty-eight (48) month period, whichever is greater, from the date of the last advance payment.
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #6

On page 52, between lines 2 & 3, strike

and insert:

Section 18. Section 440.571, Florida Statutes, is created to read:

440.571 Self Insured Public Utilities

A self insured public utility as authorized by s. 440.38(b) may assume by contract the liabilities under this chapter of contractors and subcontractors, or each of them, employed by or on behalf of such public utility when performing work on or adjacent to property owned or used by the public utility.

(Renumber subsequent sections).
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted: and failed:

Amendment #7

On page 41, between lines 2 & 3, strike and insert:

Section 14. Subsection (1) of section 440.38, Florida Statutes, is amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.--

(1) Every employer shall secure the payment of compensation under this chapter:

(c) By entering into a contract with a public utility under an approved utility provided self-insured program as set forth in s. 440.571 in effect as of July 1, 1983. The division shall adopt rules to implement this paragraph.

(Renumber subsequent sections)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted: and failed:

Amendment #8
11 lines 21-31
On page 12, lines 1-22, strike

[If amendment is text from another bill insert:

Bill No.
Draft No.]

and insert:

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FOR COMMITTEE USE ONLY

Amendment No. taken up by committee: Adopted Failed

Offered by

(Amendment No. Adopted Failed Date)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #10

On page 19, lines 15-31, strike

On page 20, lines 1-31, strike

On page 21, lines 1-2, strike

all of said lines

and insert:

(9) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.

(a) Weekly compensation benefits payable under this chapter for disability resulting from injuries to an employee who becomes eligible for benefits under 42 U.S.C. s. 423 shall be reduced to an amount whereby the sum of such compensation benefits payable under this chapter and such total benefits otherwise payable for such period to the employee and his dependents, had such employee not been entitled to benefits under this chapter, under 42 U.S.C. ss. 423 and 402, does not exceed 80 percent of the employee's average weekly wage. However, this provision shall not operate to reduce an injured worker's benefits under this chapter to a greater extent than they would have otherwise been reduced under 42 U.S.C. s. 424(a). This reduction of compensation benefits shall not be applicable to any compensation benefits payable for any week subsequent to the week in which the injured worker reaches the age of 62 years.
(b) If the provisions of 42 U.S.C. s. 424(a) are amended to provide for a reduction or increase of the percentage of average current earnings that the sum of compensation benefits payable under this chapter and the benefits payable under 42 U.S.C. s. 423 and s. 402 can equal, the amount of the reduction of benefits provided in this subsection shall be reduced or increased accordingly.

(c) No disability compensation benefits payable for any week, including those benefits provided by paragraph (1)(e), shall be reduced pursuant to this subsection until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. ss. 423 and 402 and the employee has begun receiving such social security benefit payments. The employee shall, upon demand by the division, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to him and authorize the Division of Employment Security to release unemployment compensation information relating to him, in accordance with rules to be promulgated by the division prescribing the procedure and manner for requesting the authorization and for compliance by the employee. Neither the division nor the employer or carrier shall make any payment of benefits for total disability or those additional benefits provided by paragraph (1)(e) for any period during which the employee willfully fails or refuses to authorize the release of information in the manner and within the time prescribed by said rules. The authority for release of disability information granted by an employee under this paragraph shall be effective for a period not to exceed 12 months, such authority to be renewable as the division may prescribe by rule.
The Committee on Commerce... recommended the following amendment which was moved by Senator ........... and adopted: and failed:

Title Amendment - Amendment #11

On page 1, lines 18 & 19, strike

a providing for a payment schedule 

b 

c 

d 

e 

If amendment is text from another bill insert:

Bill No. Draft No.

and insert:

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FOR COMMITTEE USE ONLY

Amendment No .... taken up by committee: Adopted ...... Failed ....

Offered by 

(Amendment No. .... Adopted ...... Failed ...... Date ........)

HB 1277
The Committee on Commerce recommended the following amendment which was moved by Senator ... and adopted: and failed:

Title Amendment - Amendment #12

On page ....... line ........

a
b
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d
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If amendment is text from another bill insert:
Bill No. Draft No.

and insert:

1 eliminating certain unavailability of employment ... 
2 as a factor in wage-loss calculations;

For Committee Use Only

Amendment No. ... taken up by committee: Adopted ... Failed ...
Offered by ... (Amendment No. ... Adopted ... Failed ... Date ...)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted: and failed:

Title Amendment - Amendment #13

On page 1, line 27, xxxxx

a after "benefits;"

and insert:

1 limiting, applicability of benefits for ...
2 temporary partial disability; ...

Bill No. Draft No.
The Committee on Commerce recommended the following amendment which was moved by Senator ... and adopted: and failed:

Title Amendment - Amendment #14

In title, On page 2, line 20, XXXXXX

<table>
<thead>
<tr>
<th>Title</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>a</td>
<td>After &quot;Florida Statutes,&quot;</td>
</tr>
<tr>
<td>b</td>
<td>XXXXXX</td>
</tr>
<tr>
<td>c</td>
<td>XXXXXX</td>
</tr>
<tr>
<td>d</td>
<td>XXXXXX</td>
</tr>
<tr>
<td>e</td>
<td>XXXXXX</td>
</tr>
</tbody>
</table>

If amendment is text from another bill insert:

Bill No. Draft No.

and insert:

1 requiring certain orders of deputy commissioners

<table>
<thead>
<tr>
<th>Amendment No.</th>
<th>taken up by committee:</th>
<th>Adopted</th>
<th>Failed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offered by</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Amendment No._______ Adopted_______ Failed_______ Date________)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted: and failed:

Technical Amendment - Amendment #15

In title, On page ....39....., lines ..19-20 .. strike

a ..........All of said lines.........................

b ................. ........................................

c ................. ........................................

d ................. ........................................

e ................. ........................................

If amendment is text from another bill insert:

Bill No. ........ Draft No.

and insert:

1 ..........Section 12...Subsections (3) and (5) of section............

2 ..........§40.34, Florida Statutes, are amended to read:..............

3 ................. ........................................

4 ................. ........................................

5 ................. ........................................

6 ................. ........................................

7 ................. ........................................

8 ................. ........................................

9 ................. ........................................

10 ................. ........................................

11 ................. ........................................

12 ................. ........................................

13 ................. ........................................

14 ................. ........................................

15 ................. ........................................

16 ................. ........................................

17 ................. ........................................

18 ................. ........................................

19 ................. ........................................

Amendment No........, taken up by committee: Adopted..... Failed.....

Offered by.........................................................

(Amendment No._____, Adopted_____, Failed_____, Date_______)
**AGENDA**

**SENATE COMMITTEE MEETING**

**June 2, 1983**

**COMMITTEE:** Commerce

**MEMBERS:**
- Pat Thomas (D-Tallahassee), Chairman
- W. D. Childers (D-Pensacola), Vice Chairman
- Dempsey J. Barron (D-Panama City)
- Roberta Fox (D-Coral Gables)
- Arnett E. Girardeau (D-Jacksonville)
- Warren S. Henderson (R-Venice)
- Toni Jennings (R-Orlando)
- Harry A. Johnston, II (D-West Palm Beach)
- Gwen Margolis (D-North Miami Beach)
- Tom McPherson (D-Fort Lauderdale)
- James A. Scott (R-Fort Lauderdale)
- John W. Vogt (D-Cocoa Beach)

**TIME AND PLACE:** 12 noon, June 2, 1983, Room "A", Senate Office Building

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Introducer</th>
<th>Relating to:</th>
<th>Bill History</th>
<th>Committee Action</th>
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<tbody>
<tr>
<td>SB 957</td>
<td>Thomas</td>
<td>WORKERS' COMPENSATION; eliminates certain unavailability of employment as a factor in wage-loss calculations, limits applicability of benefits for temporary partial disability, provides for offset of benefits under municipal pension plans, etc. Amends 440 15, 34</td>
<td>Also referred to Appropriations.</td>
<td></td>
</tr>
<tr>
<td>HB 1277</td>
<td>Commerce</td>
<td>WORKERS' COMPENSATION; changes types of communications exempt from administrative procedures, reiterates exclusiveness of liability provisions of workers' compensation laws; requires treatment and care for employees to be medically necessary, etc. Amends ch. 440, repeals 440.02(19), .56(7).</td>
<td>Commerce is the only reference.</td>
<td></td>
</tr>
</tbody>
</table>
SUBCOMMITTEE REPORT

File with Parent Committee

To Chairman, Committee on Commerce

Subcommittee on Property & Casualty Insurance

Date of meeting April 12, 1983

Time 1:00-4:00 p.m.

Place 24 House Office Building

FINAL ACTION: FAVORABLE

X FAVORABLE WITH 1 AMENDMENT

UNFAVORABLE

Vote:

<table>
<thead>
<tr>
<th>YEAS</th>
<th>MEMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Rep. Hazouri</td>
</tr>
<tr>
<td></td>
<td>Rep. R. Johnson</td>
</tr>
<tr>
<td>X</td>
<td>Rep. McEwan</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Pajcic</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Simon</td>
</tr>
<tr>
<td></td>
<td>Rep. Thompson</td>
</tr>
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</table>

Total Yeas 5

<table>
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<tr>
<th>NAYS</th>
<th>MEMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rep. Williams</td>
</tr>
<tr>
<td></td>
<td>Rep. Gustafson</td>
</tr>
</tbody>
</table>

Total Nays 1

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kathleen A. Betancourt</td>
<td>City of Tampa</td>
<td>City Hall Plaza</td>
</tr>
<tr>
<td>Jim Brainerd</td>
<td>Fla. Assn. of Ins. Agents</td>
<td>3159 Shamrock Sq. Tallahassee, FL</td>
</tr>
<tr>
<td>Andrew E. Dann, Sr.</td>
<td>Fla. State Council of Carpenters APL-CIO</td>
<td>1020 E. Lafayette St. Tallahassee, FL</td>
</tr>
<tr>
<td>Barbara Floyd</td>
<td>Rehabilitation Advisors</td>
<td>P.O. Box 8612-A Orlando, FL</td>
</tr>
<tr>
<td>Mike Hale</td>
<td>Department of Labor</td>
<td>Roger Center</td>
</tr>
<tr>
<td>Robert Lewis</td>
<td>Fla. League of Cities</td>
<td>P.O. Box 1757 Tallahassee, FL</td>
</tr>
<tr>
<td>Charlie McCallister</td>
<td>Fla. Farm Bureau Ins. Co.</td>
<td>P.O. Box 730 Gainesville, FL</td>
</tr>
<tr>
<td>Joe Martin</td>
<td>Florida AFL-CIO</td>
<td>420 South Side</td>
</tr>
<tr>
<td>Steven A. Rissman</td>
<td>Florida Bar</td>
<td>701 E. South St. Orlando, FL</td>
</tr>
</tbody>
</table>

(Note: If additional persons, enter on reverse side and check here)

NOTE. Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee.

Date

Received by

H-74(1976)
**Committee Information Record**

**House of Representatives**

*Bill No.: PCB 8*

**Deborah on Commerce**

**Date of meeting:** April 26, 1983

**Time:** 2:00 p.m.

**Place:** 21 HOB

**Final Action:**
- X Favorable
- ___ Favorable with Amendments
- ___ Favorable with Substitute
- ___ Unfavorable

**Vote:**

<table>
<thead>
<tr>
<th>Yea</th>
<th>Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Rep. Abrams</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Danson</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Deratany</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Gallagher</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Gardner</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Gustafson</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Hargrett</td>
</tr>
<tr>
<td>X</td>
<td>Rep. M.E. Hawkins</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Hazouri</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Ron Johnson</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Kutun</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Lehtinen</td>
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<tr>
<td>X</td>
<td>Rep. Martinez</td>
</tr>
<tr>
<td>X</td>
<td>Rep. McEwan</td>
</tr>
<tr>
<td>X</td>
<td>Rep. Meffert</td>
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</table>

<table>
<thead>
<tr>
<th>Nay</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
</tr>
</tbody>
</table>

**Total Yea: 23**

**Total Nays: 0**

**Committee Appearance Record**

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kathy Betancourt</td>
<td>City of Tampa</td>
<td>City Hall Plaza, Tampa, FL</td>
</tr>
<tr>
<td>Al Frierson</td>
<td>Self</td>
<td>1200 Kagomada, Ft. Myers, FL</td>
</tr>
<tr>
<td>Mike Hale &quot;X&quot;</td>
<td>State Dept. of Labor &amp;</td>
<td>1321 Executive Center Drive</td>
</tr>
<tr>
<td></td>
<td>Rep. Sec.</td>
<td>Tallahassee, FL</td>
</tr>
<tr>
<td>Jack Herzog</td>
<td>State Dept. of Insurance</td>
<td>Pl. Capitol, Tallahassee, FL</td>
</tr>
<tr>
<td>Richard Sicking</td>
<td>Fla. AFL-CIO</td>
<td>1951 N.W. 17th Ave., Miami, FL</td>
</tr>
</tbody>
</table>

**NOTE:** Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here.)

**File & copies with Clerk**

H-22(1976)
**COMMITTEE APPEARANCE RECORD**

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mary Ann Stiles</td>
<td>Associated Ind. of Fla.</td>
<td>501 E. Kennedy Blvd. Tampa, FL</td>
</tr>
</tbody>
</table>
Meeting begins

1:15 PCB 83-24

1:20 Mike Hale - Department of Labor
1:25 Mary Ann Stiles - Associated Industries
1:30 Charlie McAllister - Florida Farm Bureau Ins. Co.
1:33 Jim Brainerd - FAIA

1:34 HB 298 - TP'd

1:35 HB 332

1:35 Representative Hodges
1:40 Mary Ann Stiles - Associated Industries
1:43 Andrew Dann - Fla. State Council of Carpenters AFL-CIO
1:45 John Culbreath - Florida Chiropractic Association
1:48 Jim Brainerd - FAIA
1:50 Ed Williams - Florida Chiropractic Association

1:57 HB 332 - Passes 7-0

1:57 PCB 83-24 (taken back up)

1:58 Mike Hale - Department of Labor

2:00 CHANGED TAPE + D SDDER

2:05 HB 371

2:05 Representative Wallace
2:06 Bob Butterworth - Florida Highway Patrol
2:07 John Seebach - Fraternal Order of Police
2:09 Buddy McCue - FAIA

2:10 HB 371 - Passes 6-0

2:11 PCB 83-24 (taken back up)

2:12 Mike Hale - Department of Labor
2:17 Mary Ann Stiles - Associated Industries
2:20 Jim Brainerd - FAIA
2:22 Joe Martin - AFL-CIO
2:25 Mary Ann Stiles
2:26 Mike Hale - Department of Labor

2:45 CHANGED TAPE + TAPES Q
2:45 Barbara Floyd - Rehabilitation Advisors
2:50 Jim Brainerd - FAIA
3:09 Andrew Dann - AFL-CIO

3:15 PCB 83-24 Passes 5-1

3:15 PCB 83-19A

3:15 Mitch Haigler - Florida Home Builders
3:19 Joe Fuller - Professional Insurance Agency
3:20 Buddy McCue - FAIA

3:25 PCB 83-19A - Passes 5-0

3:30 CHANGED TAPE T 83-19B

3:30 PCB 83-41

3:30 Terry Butler - Department of Insurance
3:34 Buddy McCue - FAIA
3:37 Gary Grannoff - Department of Insurance (Actuary)
3:43 Harry Landrum - Florida Insurance Council

3:49 PCB 83-41 - Passes 4-1

3:48 PCB 83-42

3:54 PCB 83-42 - Passes 5-0

4:00 PCB 83-43

4:00 Bob Butterworth - Dept. of Highway Safety
4:05 Roy Gray - Department of Insurance

4:12 PCB 83-43 - Fails 2-3

4:12 PCB 83-49

4:12 Spencer Cullen - Department of Insurance

4:15 PCB 83-49 - Passes 5-0

4:15 RISE
Meeting opens. HB 531 taken up. 15 amendments adopted. Vote taken on bill -- passed as a Committee Substitute w/15 amendments.

30 PM PCB 83-24 taken up. Al Frierson spoke to this bill as a proponent. Al Frierson spoke against Amend. #2; but for the proposal (for washouts).

32 PM Jack Herzog speaks for the amendment.

Mike Hale, Deputy Secretary of Labor, Dept. of Labor & Employment Security, speaks to amend. #3.

48 PM TAPE 1 - SIDE B BEGAN


Kathy Betancourt speaks to Amend. #8.

Vote taken on bill -- bill passes w/7 amendments.

58 PM PCB 83-19A taken up.

Vote taken on bill -- bill passes.

Commissioner Bill Gunter, State Dept. of Insurance, speaks to PCB 83-41 as a proponent.

Vote taken on bill -- bill fails.

10 PM Charlene Carres speaks re. PCB 83-41.
4:19 PM  Rep.'s Danson and Hazouri close on bill.

4:22 PM TAPE 2 - SIDE B BEGAN

Vote taken on Hazouri's amend. to the amend -- amend. passes.

Chairman Bell speaks against the Hazouri amend.


Representatives Silver, Gustafson, Meffert, & M. E. Hawkins speak to bill.

Rep. Gallagher moved to reconsider the vote by which the bill failed.


4:48 PM Vote taken on PCB 83-25Y (as amended) -- passed 13-8 w/1 amend. (25% cap).

50 PM PCB 83-44 taken up.
5 amendments were offered and adopted; no vote taken on bill -- TP'd.
PCB 83-24 represents the recommendations of the Advisory Committee on Workers' Compensation appointed by the Speaker, as amended by the Subcommittee on Property and Casualty Insurance. Major changes include:

1. The bill allows wage-loss benefits to be paid after age 65, with an offset for the amount of Social Security retirement benefits received (Page 18, Line 1). Under present law, wage-loss benefits automatically terminate at age 65 (Page 17, Lines 28-29).

2. The bill provides for a reduction in compensation benefits based on the amount of municipal pension plan benefits received, in the same manner as is done for Social Security disability benefits. (Workers' compensation benefits are reduced to an amount where the sum of compensation benefits and Social Security disability benefits or municipal pension plan benefits does not exceed 80 percent of the employee's average weekly wage.) (Page 19, Line 9 then Page 20, Line 4).

3. Authorizes the Division and Deputy Commissioners to obtain medical records of injured employees (Page 24, Line 2 and on Page 39, Line 4).

4. The bill allows certain cases to be settled or "washed out" by a lump sum payment which may not be settled under present law. Under present law, future medical expenses may never be settled by a lump sum payment, and future disability benefits may
only be washed-out 6 months after medical improvement. The bill provides an exception for cases in which the employer or carrier has initially filed a written notice to controvert and has denied that a compensable accident or injury occurred. In other words, the employer is claiming that it has no liability at all for workers' compensation. For such cases, if the deputy commissioner finds a justiciable controversy as to compensability, the claim may be settled by a lump sum payment (page 30, line 27 then page 31, line 24).

5. The bill also addresses the issue of attorney's fees in third-party suits. Presently, if an employee brings a suit against a third-party for an injury that resulted in workers' compensation being paid, the employer is entitled to reimbursement for 100 percent of compensation benefits paid. The employer does not share in the cost of the attorney's fee which is paid out of the claimant's recovery. The bill deducts from the reimbursement to the employer its pro rata share of the court costs and attorney's fees incurred by the employee. ("Pro rata share" is defined as an amount equal to the percentage of the judgment which are costs and attorney's fees. For example, if the employer paid $40,000 in compensation, and the employee obtained a $100,000 judgment with a $40,000 (40%) attorney's fee, the employer would have 40% deducted from his reimbursement, netting the employer $24,000. The employee in this example would net $36,000.)
6. The bill changes the names of the deputy commissioners to "judges of compensation claims" (Page 49, Line 6).

7. This bill provides for a statewide medical fee schedule which was also provided in PCB #21, passed by this committee earlier (Page 11, Line 23).
ADVISORY COMMITTEE TO COMMERCE COMMITTEE

ON

WORKERS' COMPENSATION

Fred Tygart, Chairman
1012 Blackstone Building
233 East Bay Street
Jacksonville, Florida 32202
Phone: 904/359-0011/Suncom: 694-6540

Thomas J. Carroll, Chief Commissioner
Office of Chief Commissioner
Department of Labor & Employment Security
215 Montgomery Building
Koger Center
Tallahassee, Florida 32301
Phone: 488-2043/Suncom: 278-2043

Albert Myer Frierson
P. O. Box 280
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Ft. Myers, Florida 33902
Phone: 813/334-4121

Bob Gobelman
1500 American Heritage Life Building
Jacksonville, Florida 32202
Phone: 904/354-0624

Mike Hale, Deputy Secretary
Department of Labor & Employment Security
1321 Executive Center Drive, East
Room 200, Ashley Building
Tallahassee, Florida 32301
Phone: 488-5681

Jack Shreve
Room 4, Holland Building
Tallahassee, Florida 32301
Phone: 488-9330 (904)

Richard Sicking, Attorney
1951 N.W. 17th Avenue
Miami, Florida 33125
Phone: 305/325-1661

John G. Tomlinson
Regional Service Center, Room 390
401 N.W. Second Avenue
Miami, Florida 33128
Phone: 305/377-5412

(Business Staff)

Brian Deffenbaugh
House Commerce Committee
Room 322, The Capitol
Tallahassee, Florida 32301
Phone: 488-7024/Suncom: 278-7024
Bill Analysis

Florida House of Representatives
H. Lee Moffitt, Speaker
Steve Pajcic, Speaker pro tempore
Committee on Commerce

Samuel P. Bell, III
Chairman

Dexter W. Lehtinen
Vice Chairman

STAFF SUMMARY AND ANALYSIS

PCB 83-24 by Commerce
relating to Workers'
Compensation

Other Committees of Reference:

DATE: March 9, 1983
REVISED: __________
REVISED: __________
SENATE BILL: __________
EFFECTIVE DATE: October 1, 1983

I. SUMMARY AND PURPOSE

If an employee incurs an employment-related injury or disease, the employer must pay compensation to the employee as required by the Workers' Compensation Act, chapter 440, Florida Statutes. Chapter 440, Florida Statutes, underwent a major revision in 1979. The two major categories of changes were the adoption of a wage loss system of determining disability benefits and an increase in the administrative responsibilities of the Division of Workers' Compensation.

An advisory committee on workers' compensation was appointed by the Speaker of the House of Representatives. The committee met three times in January, 1983, and its final recommendations were presented on March 8, 1983. This bill represents the recommendations of the advisory committee.

II. CURRENT LAW AND EFFECT OF CHANGES

For ease of understanding a section by section analysis of the bill follows:

Section 1. Section 440.021 is amended to conform to the change made in section 5 of the bill which revises the procedure for the issuance of advisory opinions by the division.

Section 2. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions against an insurer for violations of certain unfair insurance practices, (§ 624.155, Florida Statutes). The bill provides that the new civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.
Section 3. The bill rewrites s. 440.13, the section specifying the requirements for providing medical services to employees. Major changes include the following:

1. Currently medical fees are "limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living." A three-member panel determines a maximum fee schedule for this purpose. There is currently only one fee schedule applicable statewide. The current schedule is based on the 66 2/3 percentile of the average charge, based on data submitted to the panel. As proposed, current practice would be codified by specifying that there must be one statewide schedule, and that the panel must establish a percentile upon which a schedule of maximum reimbursement is calculated.

2. Adding an express requirement that medical services to an employee be "medically necessary" as defined.

3. Adding a requirement that health care providers provide the division with such additional information with respect to the treatment that the division may reasonably request as part of its investigation.

4. Providing an express limitation that health care providers shall be paid solely by the employer/carrier.

5. Exempting from the Administrative Procedures Act (chapter 120) "other appropriate action" taken by the division with regard to medical utilization peer review of health care providers.


Section 4. Section 440.15, Florida Statutes, specifies the method for computing disability benefits. The bill makes the following changes:

1. Presently wage-loss benefits terminate when the employee reaches age 65 and becomes eligible for social security retirement benefits. At age 62, wage-loss benefits are reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. In lieu of these provisions, social security retirement benefits would be considered primary, and wage-loss benefits secondary, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable.

2. The bill provides that temporary partial disability benefits be treated the same as wage-loss benefits with regard to reductions in compensation due to receipt of unemployment compensation. (Temporary partial disability benefits are computed the same way as wage-loss benefits, but are paid prior to maximum medical improvement.)

3. Current law provides for a minimum $20 per week payment of compensation. Current law also provides that if social security disability benefits are received by the claimant, compensation benefits shall be reduced so that the sum of both benefits does not exceed 90% of the employee's average weekly wage. The bill provides that the $20 minimum compensation not be applicable if compensation is reduced due to receipt of social security disability benefits. (This changes current case law.)

Section 5. The bill makes the following changes to s. 440.185, relating to reports of injury:
1. The division is currently required to evaluate every claim for benefits and to issue an advisory opinion to the parties as to the entitlement to benefits. The advisory opinion is included in the case file and may be considered by the deputy commissioner. As proposed, this procedure would be less formalized, so that the division's opinion is not considered by the parties to be adjudicatory. In particular, the division would "attempt to resolve the claim and review the controversy promptly and shall communicate the results of any claims investigation along with its recommendations to the parties." (The repeal of current language is in section 6 of the bill.)

2. Increases the time for reporting of an injury by the employer to the division from 7 days to 10 days, (but maintains the requirement that the employer report an injury to the carrier within 7 days).

3. Presently, neither the division nor the deputy commissioners are authorized to obtain the medical records of an employee without a release. The bill authorizes the division to provide by rule for the obtaining of any medical records relating to medical treatment provided pursuant to this chapter. This authority would be provided to the division notwithstanding the provisions of s. 90.503 (the psychotherapist-patient privilege in the Evidence Code), s. 395.017(3) (provides that hospital patient records are privileged, except upon order of a court of competent jurisdiction for good cause shown) and s. 396.112 (provides that records of alcoholic treatment are privileged except upon court order for good cause shown). (The authorization for deputy commissioners to obtain medical records is addressed in Section 10 of this bill.)

4. Current law states that a compensable wage loss shall be reported by the employee to the carrier within 30 days after termination of the month for which such loss is claimed. As amended, failure to report a wage loss within this 30 day period shall not bar recovery if the wage-loss claim is filed within the general statute of limitations period (two years after the date of injury or after the last payment of compensation).

Section 6. The following changes are made to s. 440.19, relating to the filing of claims.

1. Current language requiring the division to issue an advisory opinion when a claim is filed is repealed. (See section 5, above, for the alternative procedure.)

2. Provides that rehabilitation services are a separate benefit distinct from medical services for purposes of the statute of limitations.

3. Case law holds that a claim by a physician against a carrier for reimbursement is subject to the four-year statute of limitations for breach of contract rather than the two-year statute of limitations in chapter 440 applicable to workers' compensation claimants. The bill provides that claims for reimbursement by providers of medical benefits be subject to the two-year statute of limitations in chapter 440.

4. Deletes the requirement that the social security number of the employer be contained in a compensation claim.

5. Current law requires claims to specifically state the type and amount of benefits claimed. As proposed, if a timely claim is dismissed for lack of specificity, the statute of limitations would be tolled for sixty days.
Section 7. Current law provides for a 12% interest penalty if compensation is not paid when due plus a 10% punitive penalty if compensation is not paid within 14 days after it becomes due. As amended, for each of these penalties the minimum penalty would be five dollars. (For example, if the 12% penalty equaled three dollars, the carrier would be required to pay five dollars.)

The bill also provides that either a deputy commissioner or the chief commissioner (rather than a deputy commissioner or the division) be required to informally approve any advance payment of compensation not in excess of $2,000.

Section 8. The following changes are made to s. 440.25, relating to the procedure in respect to claims.

1. Authorize the chief commissioner, rather than the division, to choose the site of venue for injuries occurring outside the state.

2. Provide that the chief commissioner, rather than the division, receive reports from deputy commissioners of cases which are not determined within 30 days of final hearing.

3. Provide that an appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in s. 57.081(1).

Section 9. The bill authorizes the chief commissioner to designate the manner in which hearings are recorded and reported.

Section 10. Presently, deputy commissioners are not authorized to obtain medical records of a claimant without a release from the claimant. Various sections of the Florida Statutes authorize "a court of competent jurisdiction" to order the production of medical records upon good cause shown but deputy commissioners, not being Article V judges, are not covered by such provisions. (See Section 4 of this analysis for further discussion.) The bill provides that an order of a deputy commissioner shall be considered an order of a court of competent jurisdiction for the purpose of obtaining medical records.

Section 11. The bill clarifies that on appeal, the court, in its discretion, may award an attorney fee. (Current law states that the appellate court may "increase the attorney's fee" which could be interpreted to mean that the court may increase a fee previously granted at the hearing level.)

Section 12. The bill authorizes the chief commissioner to recommend that the Governor consider removal of any deputy commissioner for cause.

Section 13. The following changes are made to s. 440.49:

1. The current rehabilitation statute is silent with regard to who has the right to select the rehabilitation provider. The bill specifies that the same selection procedure for selection of a health care provider applies to selection of a rehabilitation provider, i.e., that the employer/carrier chooses the provider and if the employee objects, the employer/carrier must select another rehabilitation provider.

2. Currently, employer/carriers are required to provide rehabilitation services to an employee when it appears that the injury will preclude the employee from earning wages equal to wages earned prior to the injury. As proposed, the division is required to establish by rule the minimum qualifications for rehabilitation service providers. Employer/carriers would be
required to use only the services of those rehabilitation providers approved by the division.

3. The Special Disability Trust Fund provides partial reimbursement to employer/carriers for compensation paid to an employee when an injury and a preexisting physical impairment merge to cause a disability. Presently, if a merger results in permanent total disability, the Fund reimburses the employer for compensation in excess of the first 175 weeks of permanent total compensation. The employer is also reimbursed for 50% of the first $10,000 of compensation paid for temporary disability and medical benefits. However, if merger results in permanent total disability, the employer must pay permanent total compensation for 175 weeks before being reimbursed for excess compensation paid for temporary disability and medical benefits. As amended, upon a determination that merger caused permanent total compensation, the employer shall be immediately reimbursed for excess compensation paid for temporary compensation and medical benefits.

4. Specifies that with regard to reimbursement from the Special Disability Trust Fund, rehabilitation services shall be considered remedial attendance (medical benefits) and shall be reimbursed in accordance with the formula for remedial attendance.

Section 14. Currently, all carriers are required to provide safety consultations to their policyholders. The bill proposes that the division establish by rule the minimum standards for such safety programs.

Section 15. Technical conforming amendment.

Section 16. Deletes the definition of "registered mail" which is no longer used in the chapter. The bill also repeals the provision requiring carriers to offer a co-insurance policy to employers, whereby the employer pays 20 percent of benefits due up to $2,500 or $5,000.

Section 17. Changes the names of the deputy commissioners to "judges of compensation claims."

Section 18. Effective date of October 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Those persons over age 65 and receiving social security retirement benefits would no longer be disqualified from receiving wage-loss benefits. Social security retirement benefits would be considered primary and wage-loss benefits supplemental only, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable. Therefore, persons over age 65 could not receive wage-loss benefits. However, persons between the age of 62 and 65 and receiving social security retirement benefits would, in some cases, receive less wage-loss benefits than currently paid, and in no case would they receive more. Presently, such persons have their wage-loss benefits reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. Therefore, such persons receive at least 50 percent of wage-loss benefits plus social security, with the total amount being equal to or greater than the amount of wage-loss benefits that would have been otherwise payable. Under the bill, wage-loss benefits are supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits otherwise payable.
The Division of Workers' Compensation estimates that the total amount of wage-loss benefits paid would increase in the aggregate due to this change, which could increase workers' compensation rates by approximately 3 percent.

B. PUBLIC SECTOR CONSIDERATIONS

Section 13 of the bill requires the division to develop a list of approved rehabilitation providers. The administrative expenses involved in this procedure are unknown at this time.

IV. COMMENTS

None.

Prepared by:  
Brian Deffenbaugh

Staff Director:  
Wyatt T. Martin
Bill Analysis

Florida House of Representatives

STAFF SUMMARY AND ANALYSIS

PCB 83-24 by Commerce
relating to Workers'
Compensation

Other Committees of Reference:

DATE: March 9, 1983

REVISED: April 14, 1983

REVISED: May 3, 1983

SENATE BILL:

EFFECTIVE DATE:

October 1, 1983

I. SUMMARY AND PURPOSE

If an employee incurs an employment-related injury or disease, the employer must pay compensation to the employee as required by the Workers' Compensation Act, chapter 440, Florida Statutes. Chapter 440, Florida Statutes, underwent a major revision in 1979. The two major categories of changes were the adoption of a wage loss system of determining disability benefits and an increase in the administrative responsibilities of the Division of Workers' Compensation.

An advisory committee on workers' compensation was appointed by the Speaker of the House of Representatives. The committee met three times in January, 1983, and its final recommendations were presented on March 8, 1983. This bill represents the recommendations of the advisory committee, as amended by the Committee on Commerce.

II. CURRENT LAW AND EFFECT OF CHANGES

For ease of understanding a section by section analysis of the bill follows:

Section 1. The bill specifies that persons are not covered under the workers' compensation law if they are performing labor under a court ordered work program for conviction of driving under the influence of controlled substances as provided in s. 316.193, F.S.

The bill also substantially revises the definition of a "volunteer" who is exempt from coverage under the workers' compensation law. Present law specifically exempts from coverage only those volunteers who serve in private nonprofit agencies and federal programs. (Although present law does not specifically exempt other kinds of volunteers, it implicitly exempts anyone who is not an "employee" as defined, which excludes most volunteer arrangements.) The bill exempts from coverage anyone...
who is a volunteer, except volunteer workers for the state, county, city, or other governmental entity. The bill also provides that a person not receiving monetary remuneration for his services shall be presumed to be a volunteer unless there is substantial evidence that valuable consideration was intended by both the employer and employee.

Section 2. Section 440.021 is amended to conform to the change made in section 5 of the bill which revises the procedure for the issuance of advisory opinions by the division.

Section 3. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions against an insurer for violations of certain unfair insurance practices, (s. 624.155, Florida Statutes). The bill provides that the new civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.

Section 4. The bill rewrites s. 440.13, the section specifying the requirements for providing medical services to employees. Major changes include the following:

1. Currently medical fees are "limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living." A three-member panel determines a maximum fee schedule for this purpose. There is currently only one fee schedule applicable statewide. The current schedule is set at the 66 2/3 percentile of the range of charges for a particular service, based on data submitted to the panel. The statute is amended to more clearly authorize current practice by specifying that there must be one statewide schedule, and that the panel must establish a percentile upon which a schedule of maximum reimbursement is calculated.

2. Adding an express requirement that medical services to an employee be "medically necessary" as defined.

3. Adding a requirement that health care providers provide the division with such additional information with respect to the treatment that the division may reasonably request as part of its investigation.

4. Providing an express limitation that health care providers shall be paid solely by the employer/carrier.

5. Adding definitions for "peer review committee," "physician," "health care provider," "medically necessary," and "health care facility" for purposes of the entire section.

Section 5. Section 440.15, Florida Statutes, specifies the method for computing disability benefits. The bill makes the following changes:

1. Presently wage-loss benefits terminate when the employee reaches age 65 and becomes eligible for social security retirement benefits. At age 62, wage-loss benefits are reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. In lieu of these provisions, social security retirement benefits would be considered primary, and wage-loss benefits secondary, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable.

2. Presently weekly compensation benefits are reduced by the amount of Social Security disability benefits received, to an amount where the sum of the two benefits does not exceed 80
percent of the employee's average weekly wage. Due to the application of this offset to "weekly" compensation benefits, there is no express authorization for offsetting monthly wage-loss benefits. By striking the word "weekly," the bill applies the Social Security offset to all compensation benefits.

3. The bill provides that temporary partial disability benefits be treated the same as wage-loss benefits with regard to reductions in compensation due to receipt of unemployment compensation. (Temporary partial disability benefits are computed the same way as wage-loss benefits, but are paid prior to maximum medical improvement.)

4. Current law provides for a minimum $20 per week payment of compensation. Current law also provides that if Social Security disability benefits are received by the claimant, compensation benefits shall be reduced so that the sum of both benefits does not exceed 80% of the employee's average weekly wage. The bill provides that the $20 minimum compensation requirement does not apply if compensation is reduced due to receipt of Social Security disability benefits. (This changes current case law.)

Section 6. The bill makes the following changes to s. 440.185, relating to reports of injury:

1. The division is currently required to evaluate every claim for benefits and to issue an advisory opinion to the parties as to the entitlement to benefits. The advisory opinion is included in the case file and may be considered by the deputy commissioner. As proposed, this procedure would be less formalized, so that the division's opinion is not considered by the parties to be adjudicatory. In particular, the division would "attempt to resolve the claim and review the controversion promptly and shall communicate the results of any claims investigation along with its recommendations to the parties." (The repeal of current language is in section 7 of the bill.)

2. Increases the time for reporting of an injury by the employer to the division from 7 days to 10 days, (but maintains the requirement that the employer report an injury to the carrier within 7 days).

3. Presently, neither the division nor the deputy commissioners are authorized to obtain the medical records of an employee without a release. The bill authorizes the division to provide by rule for the obtaining of any medical records relating to medical treatment provided pursuant to this chapter. This authority would be provided to the division notwithstanding the provisions of s. 90.503 (the psychotherapist-patient privilege in the Evidence Code), s. 395.017(3) (provides that hospital patient records are privileged, except upon order of a court of competent jurisdiction for good cause shown) and s. 396.112 (provides that records of alcoholic treatment are privileged except upon court order for good cause shown). (The authorization for deputy commissioners to obtain medical records is addressed in Section 10 of this bill.)

Section 7. The following changes are made to s. 440.19, relating to the filing of claims.

1. Current language requiring the division to issue an advisory opinion when a claim is filed is repealed. (See section 5, above, for the alternative procedure.)

2. Provides that rehabilitation services are a separate benefit distinct from medical services for purposes of the statute of limitations.
3. Case law holds that a claim by a physician against a carrier for reimbursement is subject to the four-year statute of limitations for breach of contract rather than the two-year statute of limitations in chapter 440 applicable to workers' compensation claimants. The bill provides that claims for reimbursement by providers of medical benefits be subject to the two-year statute of limitations in chapter 440.

4. Deletes the requirement that the social security number of the employer be contained in a compensation claim.

5. Current law requires claims to state specifically the type and amount of benefits claimed. As proposed, if a timely claim is dismissed for lack of specificity, the statute of limitations would be tolled for sixty days.

Section 8. In 1979, one of the major reforms of the workers' compensation law was a significant restriction in parties' ability to settle or "wash-out" a claim with a lump sum payment. The intent of the present law is expressed in s. 440.20(12)(a) which states, "It is the stated policy for the administration of the workers' compensation system that is in the best interests of the injured worker that he receive disability or wage-loss payments on a periodic basis." Present law prohibits in all cases the payment of a lump sum in exchange for the release of an employer's liability for future medical expenses. For future disability payments, lump sum settlements are prohibited until 6 months after the date of maximum medical improvement has been reached.

The bill would except from the lump sum settlement restrictions cases in which the employer or carrier has initially filed a written notice to controvert and denied that a compensable accident or injury has occurred, and the deputy commissioner finds a justiciable controversy as to compensability. The bill also provides that notwithstanding the attorney's fee section, s. 440.34, the claimant shall be responsible for payment of his own attorney's fees in a case settled under this subsection. The new lump sum settlement provisions are repealed on July 1, 1986.

The bill increases the discount factor from 4 percent to 8 percent for computing the present value of lump sum payments of compensation.

Current law provides for a 12% interest penalty if compensation is not paid when due plus a 10% punitive penalty if compensation is not paid within 14 days after it becomes due. As amended, for each of these penalties the minimum penalty would be five dollars. (For example, if the 12% penalty equaled three dollars, the carrier would be required to pay five dollars.)

The bill also provides that either a deputy commissioner or the chief commissioner (rather than a deputy commissioner or the division) be required to approve informally any advance payment of compensation not in excess of $2,000.

Section 9. The following changes are made to s. 440.25, relating to the procedure in respect to claims:

1. Authorizes the chief commissioner, rather than the division, to choose the site of venue for injuries occurring outside the state.

2. Provides that the chief commissioner, rather than the division, receive reports from deputy commissioners of cases which are not determined within 30 days of final hearing.
3. Provides that an appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in s. 57.081(1).

Section 10. The bill authorizes the chief commissioner to designate the manner in which hearings are recorded and reported.

Section 11. Presently, deputy commissioners are not authorized to obtain medical records of a claimant without a release from the claimant. Various sections of the Florida Statutes authorize "a court of competent jurisdiction" to order the production of medical records upon good cause shown but deputy commissioners, not being Article V judges, are not covered by such provisions. (See Section 6 of this analysis for further discussion.) The bill provides that an order of a deputy commissioner shall be considered an order of a court of competent jurisdiction for the purpose of obtaining medical records.

Section 12. The bill clarifies that on appeal, the court, in its discretion, may award an attorney's fee. (Current law states that the appellate court may "increase the attorney's fee" which could be interpreted to mean that the court may increase a fee previously granted at the hearing level.)

Section 13. Presently, carriers are required to offer to employers a co-insurance policy under which the employer pays 20 percent of benefits up to $2,500 or $5,000. The bill eliminates the requirement for a written rejection by the employer and provides that co-insurance shall be made available at the written request of the employer.

Section 14. Presently, if an employee brings a suit against a third-party tortfeasor for an injury that resulted in workers' compensation being paid, the employer/carer is entitled to reimbursement for 100 percent of compensation benefits paid. The employer/carer does not share in the cost of the attorney's fees incurred by the claimant. The bill deducts from the reimbursement to the employer/carer its pro rata share of the court costs and attorney's fees incurred by the employee. "Pro rata share" is defined as an amount equal to the percentage of the judgment which are costs and attorney's fees. For example, if the employer paid $40,000 in compensation, and the employee obtained a $100,000 judgment with a $40,000 (40%) attorney's fee, the employer would have 40% deducted from his reimbursement, netting the employer $24,000. The employee in this example would net $36,000.

Section 15. The bill authorizes the chief commissioner to recommend that the Governor consider removal of any deputy commissioner for cause.

Section 16. The bill requires the Division of Workers' Compensation to establish the minimum qualifications for rehabilitation service providers and to prepare a directory of approved providers. Employers and carriers would be required to use only those providers on the approved list. Certain exceptions are provided.

The Special Disability Trust Fund provides partial reimbursement to employer/carriers for compensation paid to an employee when an injury and a preexisting physical impairment merge to cause a disability. Presently, if a merger results in permanent total disability, the Fund reimburses the employer for compensation in excess of the first 175 weeks of permanent total compensation. The employer is also reimbursed for 50% of the first $10,000 of compensation paid for temporary disability and medical benefits. However, if merger results in permanent total disability, the employer must pay permanent total compensation
for 175 weeks before being reimbursed for excess compensation paid for temporary disability and medical benefits. As amended, upon a determination that merger caused permanent total compensation, the employer shall be immediately reimbursed for excess compensation paid for temporary compensation and medical benefits.

The bill also specifies that with regard to reimbursement from the Special Disability Trust Fund, rehabilitation services shall be considered remedial attendance (medical benefits) and shall be reimbursed in accordance with the formula for remedial attendance.

Section 17. Section 440.57 allows two or more employers to form a group self-insurance fund. This section also allows the plan to provide that each employer member shall be responsible for the first $100 of medical benefits due to each employee. The bill provides that the plan may provide that each employer shall be responsible for up to $500 of medical benefits due to each employee.

Section 18. Deletes the definition of "registered mail" which is no longer used in the chapter. The bill also repeals the provision that establishes job qualifications for the industrial safety consultant hired by the division.

Section 19. Effective date of October 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Those persons over age 65 and receiving social security retirement benefits would no longer be disqualified from receiving wage-loss benefits. Social security retirement benefits would be considered primary and wage-loss benefits supplemental only, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable. Therefore, persons over age 65 could receive wage-loss benefits. However, persons between the age of 62 and 65 and receiving social security retirement benefits would, in some cases, receive less wage-loss benefits than currently paid, and in no case would they receive more. Presently, such persons have their wage-loss benefits reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. Therefore, such persons receive at least 50 percent of wage-loss benefits plus social security, with the total amount being equal to or greater than the amount of wage-loss benefits that would have been otherwise payable. Under the bill, wage-loss benefits are supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits otherwise payable.

The National Council on Compensation Insurance estimates that the total amount of wage-loss benefits paid would increase in the aggregate due to this change, which could increase workers' compensation rates by approximately 3 percent.

The National Council on Compensation Insurance has estimated that the new lump sum settlement provisions could increase overall compensation costs by 10 percent due to increased attorney involvement, over-compensation of minor injuries, determination of wage loss prior to rehabilitation, and compensation based on subjective criteria.

B. PUBLIC SECTOR CONSIDERATIONS

No substantial impact.
IV. COMMENTS

None.

Prepared by: Brian Deffebough

Staff Director: Wyatt Maltin
I. SUMMARY:

A. Present Situation:

If an employee incurs an employment-related injury or disease, the employer must pay compensation to the employee as required by the Workers' Compensation Act, chapter 440, Florida Statutes. Chapter 440, Florida Statutes, underwent a major revision in 1979. The two major categories of changes were the adoption of a wage loss system of determining disability benefits and an increase in the administrative responsibilities of the Division of Workers' Compensation.

An advisory committee on workers' compensation was appointed by the Speaker of the House of Representatives. The committee met three times in January, 1983, and its final recommendations were presented on March 8, 1983. This bill represents the recommendations of the advisory committee, as amended by the House Committee on Commerce.

B. Effect of Proposed Changes:

For ease of understanding a section by section analysis of the bill follows:

Section 1. The bill specifies that persons are not covered under the workers' compensation law if they are performing labor under a court-ordered work program for conviction of driving under the influence of controlled substances as provided in section 316.193, Florida Statutes.

The bill also substantially revises the definition of a "volunteer" who is exempt from coverage under the workers' compensation law. Present law specifically exempts from coverage only those volunteers who serve in private nonprofit agencies and federal programs. (Although present law does not specifically exempt other kinds of volunteers, it implicitly exempts anyone who is not an "employee" as defined, which excludes most volunteer arrangements.) The bill exempts from coverage anyone who is a volunteer, except volunteer workers for the state, county, city, or other governmental entity. The bill also provides that a person not receiving monetary remuneration for his services shall be presumed to be a volunteer unless there is substantial evidence that valuable consideration was intended by both the employer and employee.

Section 2. Section 440.021 is amended to conform to the change made in section 5 of the bill which revises the procedure for the issuance of advisory opinions by the division.

Section 3. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions against an
insurer for violations of certain unfair insurance practices, (s. 624.155, Florida Statutes). The bill provides that the new civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.

Section 4. The bill rewrites s. 440.13, the section specifying the requirements for providing medical services to employees. Major changes include the following:

1. Currently medical fees are "limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living." A three-member panel determines a maximum fee schedule for this purpose. There is currently only one fee schedule applicable statewide. The current schedule is set at the 66 2/3 percentile of the range of charges for a particular service, based on data submitted to the panel. The statute is amended to more clearly authorize current practice by specifying that there must be one statewide schedule, and that the panel must establish a percentile upon which a schedule of maximum reimbursement is calculated.

2. Adding an express requirement that medical services to an employee be "medically necessary" as defined.

3. Adding a requirement that health care providers provide the division with such additional information with respect to the treatment that the division may reasonably request as part of its investigation.

4. Providing an express limitation that health care providers shall be paid solely by the employer/carrier.

5. Adding definitions for "peer review committee," "physician," "health care provider," "medically necessary," and "health care facility" for purposes of the entire section.

Section 5. Section 440.15, Florida Statutes, specifies the method for computing disability benefits. The bill makes the following changes:

1. Presently wage-loss benefits terminate when the employee reaches age 65 and becomes eligible for social security retirement benefits. At age 62, wage-loss benefits are reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. In lieu of these provisions, social security retirement benefits would be considered primary, and wage-loss benefits secondary, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable.

2. Presently weekly compensation benefits are reduced by the amount of Social Security disability benefits recived, to an amount where the sum of the two benefits does not exceed 80 percent of the employee's average weekly wage. Due to the application of this offset to "weekly" compensation benefits, there is no express authorization for offsetting monthly wage-loss benefits. By striking the word "weekly," the bill applies the Social Security offset to all compensation benefits.

3. The bill provides that temporary partial disability benefits be treated the same as wage-loss benefits with regard to reductions in compensation due to receipt of unemployment compensation. (Temporary partial disability benefits are computed the same way as wage-loss benefits, but are paid prior to maximum medical improvement).
4. Current law provides for a minimum $20 per week payment of compensation. Current law also provides that if Social Security disability benefits are received by the claimant, compensation benefits shall be reduced so that the sum of both benefits does not exceed 80% of the employee's average weekly wage. The bill provides that the $20 minimum compensation requirement does not apply if compensation is reduced due to receipt of social security disability benefits. (This changes current case law.)

Section 6. The bill makes the following changes to section 440.185, relating to reports of injury:

1. The division is currently required to evaluate every claim for benefits and to issue an advisory opinion to the parties as to the entitlement to benefits. The advisory opinion is included in the case file and may be considered by the deputy commissioner. As proposed, this procedure would be less formalized, so that the division's opinion is not considered by the parties to be adjudicatory. In particular, the division would "attempt to resolve the claim and review the controversy promptly and shall communicate the results of any claims investigation along with its recommendations to the parties." (The repeal of current language is in section 7 of the bill.)

2. Increases the time for reporting of an injury by the employer to the division from 7 days to 10 days, (but maintains the requirement that the employer report an injury to the carrier within 7 days.)

3. Presently, neither the division nor the deputy commissioners are authorized to obtain the medical records of an employee without a release.

Section 7. The following changes are made to s. 440.19, relating to the filing of claims.

1. Current language requiring the division to issue an advisory opinion when a claim is filed is repealed. (See section 5, above, for the alternative procedure.)

2. Provides that rehabilitation services are a separate benefit distinct from medical services for purposes of the statute of limitations.

3. Case law holds that a claim by a physician against a carrier for reimbursement is subject to the four-year statute of limitations for breach of contract rather than the two-year statute of limitations in chapter 440 applicable to workers' compensation claimants. The bill provides that claims for reimbursement by providers of medical benefits be subject to the two-year statute of limitations in chapter 440.

4. Deletes the requirement that the social security number of the employer be contained in a compensation claim.

5. Current law requires claims to state specifically the type and amount of benefits claimed. As proposed, if a timely claim is dismissed for lack of specificity, the statute of limitations would be tolled for sixty days.

Section 8. In 1979, one of the major reforms of the workers' compensation law was a significant restriction in parties' ability to settle or "wash-out" a claim with a lump sum payment. The intent of the present law is expressed in s. 440.20(12)(a) which states, "It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he receive
disability or wage-loss payments on a periodic basis."

Present law prohibits in all cases the payment of a lump sum in exchange for the release of an employer's liability for future medical expenses. For future disability payments, lump sum settlements are prohibited until 6 months after the date of maximum medical improvement has been reached.

The bill would exempt from the lump sum settlement restrictions those cases in which the employer or carrier has initially filed a written notice to controvert and has denied that a compensable accident or injury has occurred, and the deputy commissioner finds a justiciable controversy as to compensability. The bill also provides that notwithstanding the attorney's fee section, s. 440.34, the claimant shall be responsible for payment of his own attorney's fees in a case settled under this subsection. The new lump sum settlement provisions are repealed on July 1, 1986.

The bill increases the discount factor from 4 percent to 8 percent for computing the present value of lump sum payments of compensation.

Current law provides for a 12 percent interest penalty if compensation is not paid when due plus a 10 percent punitive penalty if compensation is not paid within 14 days after it becomes due. As amended, for each of these penalties the minimum penalty would be five dollars. (For example, if the 12% penalty equaled three dollars, the carrier would be required to pay five dollars.)

The bill also provides that either a deputy commissioner or chief commissioner (rather than a deputy commissioner or the division) be required to approve informally any advance payment of compensation not in excess of $2,000.

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fee" which could be interpreted to mean that the court may increase a fee previously granted at the hearing level.)

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Section 14. Presently, if an employee brings a suit against a third-party tortfeasor for an injury that resulted in workers' compensation being paid, the employer/carrier is entitled to reimbursement for 100 percent of compensation benefits paid. The employer/carrier does not share in the cost of the attorney's fees incurred by the claimant. The bill deducts from the reimbursement to the employer/carrier its pro rata share of the court costs and attorney's fees incurred by the employee. "Pro rata share" is defined as an amount equal to the percentage of the judgment which are costs and attorney's fees. For example, if the employer paid $40,000 in compensation, and the employee obtained a $100,000 judgment with a $40,000 (40%) attorney's fee, the employer would have 40% deducted from his reimbursement, netting the employer $24,000. The employee in this example would net $36,000.

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Section 16. The bill requires the Division of Workers' Compensation to establish the minimum qualifications for rehabilitation service providers and to prepare a directory of approved providers. Employers and carriers would be required to use only those providers on the approved list. Certain exceptions are provided.

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The bill also specifies that with regard to reimbursement from the Special Disability Trust Fund, rehabilitation services shall be considered remedial attendance (medical benefits) and shall be reimbursed in accordance with the formula for remedial attendance.

Section 17. Section 440.57 allows two or more employers to form a group self-insurance fund. This section also allows the plan to provide that each employer member shall be responsible for the first $100 of medical benefits due to each employee. The bill provides that the plan may provide that each employer shall be responsible for up to $500 of medical benefits due to each employee.
Section 18. Deletes the definition of "registered mail" which is no longer used in the chapter. The bill also repeals the provision that establishes job qualifications for the industrial safety consultant hired by the division.

Section 19. Effective date of October 1, 1983.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Those persons over age 65 and receiving social security retirement benefits would no longer be disqualified from receiving wage-loss benefits. Social security retirement benefits would be considered primary and wage-loss benefits supplemental only, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable. Therefore, persons over age 65 could receive wage-loss benefits. However, persons between the age of 62 and 65 and receiving social security retirement benefits would, in some cases, receive less wage-loss benefits than currently paid, and in no case would they receive more. Presently, such persons have their wage-loss benefits reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. Therefore, such persons receive at least 50 percent of wage-loss benefits plus social security, with the total amount being equal to or greater than the amount of wage-loss benefits that would have been otherwise payable. Under the bill, wage-loss benefits are supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits otherwise payable.

The National Council on Compensation Insurance estimates that the total amount of wage-loss benefits paid would increase in the aggregate due to this change, which could increase workers' compensation rates by approximately 3 percent.

The National Council on Compensation Insurance has estimated that the new lump sum settlement provisions could increase overall compensation costs by 10 percent due to increased attorney involvement, over-compensation of minor injuries, determination of wage loss prior to rehabilitation, and compensation based on subjective criteria.

B. Government:

No substantial impact.

III. COMMENTS:

None.

IV. AMENDMENTS:
Bill Analysis

Florida House of Representatives
H. Lee Moffitt, Speaker
Steve Paikie, Speaker pro tempore
Committee on Commerce

Samuel P. Bell, III
Chairman
Dexter W. Lehtinen
Vice Chairman

FINAL STAFF SUMMARY

HB 1277 by Commerce
(as enacted by the Legislature)
relating to workers' compensation
Committee Consideration:
House Commerce, House Appropriations, Senate Commerce
Identical*/Similar Bills:

Date: June 30, 1983
Became Law: June 30, 1983
Ch. 83-305, Laws of Florida

I. SUMMARY AND PURPOSE

If an employee incurs an employment-related injury or disease, the employer must pay compensation to the employee as required by the Workers' Compensation Act, chapter 440, Florida Statutes. Chapter 440, Florida Statutes, underwent a major revision in 1979. The two major categories of changes were the adoption of a wage loss system of determining disability benefits and an increase in the administrative responsibilities of the Division of Workers' Compensation.

An advisory committee on workers' compensation was appointed by the Speaker of the House of Representatives. The committee met three times in January, 1983, and its final recommendations were presented on March 8, 1983. This bill represents the recommendations of the advisory committee, as amended by the Legislature.

II. CURRENT LAW AND EFFECT OF CHANGES

For ease of understanding, a section by section analysis of the bill follows:

Section 1. The bill specifies that persons are not covered under the workers' compensation law if they are performing labor under a court ordered work program for conviction of driving under the influence of controlled substances as provided in s. 316.193, F.S.
The bill also substantially revises the definition of a "volunteer" who is exempt from coverage under the workers' compensation law. Present law specifically exempts from coverage only those volunteers who serve in private nonprofit agencies and federal programs. (Although present law does not specifically exempt other kinds of volunteers, it implicitly exempts anyone who is not an "employee" as defined, which excludes most volunteer arrangements.) The bill exempts from coverage anyone who is a volunteer, except volunteer workers for the state, or a county, city, or other governmental entity. The bill also provides that a person not receiving monetary remuneration for his services shall be presumed to be a volunteer unless there is substantial evidence that valuable consideration was intended by both the employer and employee.

The bill also includes within the definition of "self-insurer" a public utility that assumes the liability of contractors or subcontractors pursuant to s. 440.571. Section 440.571 is created by section 19 of this bill. See section 19 of this analysis for further discussion.

Section 2. Section 440.021 is amended to conform to the change made in section 6 of the bill which revises the procedure for the issuance of advisory opinions by the division.

Section 3. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions against an insurer for violations of certain unfair insurance practices, (s. 654.155, Florida Statutes). The bill provides that the new civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.

Section 4. The bill rewrites s. 440.13, the section specifying the requirements for providing medical services to employees. Major changes include the following:

1. Currently, medical fees are "limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living." A three-member panel determines a maximum fee schedule for this purpose. There is currently only one fee schedule applicable statewide. The schedule is set at the 66 2/3 percentile of the range of charges for a particular service, based on data submitted to the panel. The statute is amended to more clearly authorize current practice by specifying that there must be one statewide schedule, and that the panel must establish a percentile upon which a schedule of maximum reimbursement is calculated.

2. The membership of the medical fee schedule panel is changed, removing the Secretary of Labor and Employment Security and the state medical consultant of the Division of Workers' Compensation, and replacing these two members with two persons appointed by the Governor, one representing employers and one representing employees. The Insurance Commissioner remains on the panel.

3. An express requirement that medical services to an employee be "medically necessary" as defined.

4. A requirement that health care providers provide the division with such additional information with respect to the treatment that the division may reasonably request as part of its investigation.

5. An express limitation that health care providers shall be paid solely by the employer/carrier.

Section 5. Section 440.15, Florida Statutes, specifies the method for computing disability benefits. The bill makes the following changes:

1. Presently wage-loss benefits terminate when the employee reaches age 65 and becomes eligible for social security retirement benefits. At age 62, wage-loss benefits are reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. In lieu of this, social security retirement benefits would be considered primary, and wage-loss benefits secondary, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable.

2. For purposes of obtaining either wage-loss benefits or temporary partial disability benefits, the bill places the burden on the employee to show that his inability to obtain employment or to earn as much as he earned at the time of his accident is due to physical limitation related to his accident and not because of economic conditions or the unavailability of employment.

3. The bill provides that temporary partial disability benefits be treated the same as wage-loss benefits with regard to reduction due to receipt of unemployment compensation. (Temporary partial disability benefits are computed the same as wage-loss benefits, but are paid prior to maximum medical improvement.)

4. Current law provides for a minimum $20 per week payment of compensation. Current law also provides that if Social Security disability benefits are received by the claimant, compensation benefits shall be reduced so that the sum of both benefits does not exceed 80% of the employee's average weekly wage. The bill provides that the $20 minimum compensation requirement does not apply if compensation is reduced due to receipt of social security disability benefits. (This changes current case law.)

Section 6. The bill makes the following changes to s. 440.185, relating to reports of injury:

1. The division is currently required to evaluate every claim for benefits and to issue an advisory opinion to the parties as to the entitlement to benefits. The advisory opinion is included in the case file and may be considered by the deputy commissioner. As proposed, this procedure would be less formalized, so that the division's opinion is not considered by the parties to be adjudicatory. In particular, the division would "attempt to resolve the claim and review the controversy promptly and shall communicate the results of any claims investigation along with its recommendations to the parties." (The repeal of current language is in section 7 of the bill.)

2. It increases the time for reporting of an injury by the employer to the division from 7 days to 10 days, (but maintains the requirement that the employer report an injury to the carrier within 7 days).

3. Presently, neither the division nor the deputy commissioners are authorized to obtain the medical records of an employee without a release. The bill authorizes the division to provide by rule for the obtaining of any medical records relating to medical treatment provided pursuant to this chapter. This
authority would be provided to the division notwithstanding the provisions of s. 90.503 (the psychotherapist-patient privilege in the Evidence Code), s. 395.017(3) (provides that hospital patient records are privileged, except upon order of a court of competent jurisdiction for good cause shown) and s. 396.112 (provides that records of alcoholic treatment are privileged except upon court order for good cause shown). (The authorization for deputy commissioners to obtain medical records is addressed in Section 10 of this bill.)

Section 7. The following changes are made to s. 440.19, relating to the filing of claims.

1. Current language requiring the division to issue an advisory opinion when a claim is filed is repealed. (See section 6, above, for the alternative procedure.)

2. Provides that rehabilitation services are a separate benefit distinct from medical services for purposes of the statute of limitations.

3. Case law holds that a claim by a physician against a carrier for reimbursement is subject to the four-year statute of limitations for breach of contract rather than the two-year statute of limitations in chapter 440 applicable to workers' compensation claimants. The bill provides that claims for reimbursement by providers of medical benefits be subject to the two-year statute of limitations in chapter 440.

4. Deletes the requirement that the social security number of the employer be contained in a compensation claim.

5. Current law requires claims to state specifically the type and amount of benefits claimed. As amended, if a timely claim is dismissed for lack of specificity, the statute of limitations would be tolled for sixty days.

Section 8. In 1979, one of the major reforms of the workers' compensation law was a significant restriction in parties' ability to settle or "wash-out" a claim with a lump sum payment. The intent of the present law is expressed in s. 440.20(12)(a) which states, "It is the stated policy for the administration of the workers' compensation system that is in the best interests of the injured worker that he receive disability or wage-loss payments on a periodic basis." Present law prohibits in all cases the payment of a lump sum in exchange for the release of an employer's liability for future medical expenses. For future disability payments, lump sum settlements are prohibited until 6 months after the date of maximum medical improvement has been reached.

The bill would except from the lump sum settlement restrictions cases in which the employer or carrier has initially filed a written notice to controvert and denied that a compensable accident or injury has occurred and the deputy commissioner finds a justiciable controversy as to compensability. The bill also provides that notwithstanding the attorney's fee section, s. 440.34, the claimant shall be responsible for payment of his own attorney's fees in a case settled under this subsection. The new lump sum settlement provisions are repealed on July 1, 1986.

The bill increases the discount factor from 4 percent to 8 percent for computing the present value of lump sum payments of compensation.

Current law provides for a 12% interest penalty if compensation is not paid when due plus a 10% punitive penalty if
compensation is not paid within 14 days after it becomes due. As amended, for each of these penalties the minimum penalty would be five dollars. (For example, if the 12% penalty equaled three dollars, the carrier would be required to pay five dollars.)

The bill also provides that either a deputy commissioner or the chief commissioner (rather than a deputy commissioner or the division) be required to approve informally any advance payment of compensation not in excess of $2,000.

The bill limits the amount of an advance payment in any 48 month period to $7500 or 26 weeks of benefits, whichever is greater.

Section 9. The following changes are made to s. 440.25, relating to the procedure in respect to claims:

1. Authorizes the chief commissioner, rather than the division, to choose the venue for injuries occurring outside the state.

2. Provides that the chief commissioner, rather than the division, receive reports from deputy commissioners of cases which are not determined within 30 days of final hearing.

3. Provides that an appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in s. 57.081(1).

Section 10. The bill authorizes the chief commissioner to designate the manner in which hearings are recorded and reported.

Section 11. Presently, deputy commissioners are not authorized to obtain medical records of a claimant without a release from the claimant. Various sections of the Florida Statutes authorize "a court of competent jurisdiction" to order the production of medical records upon good cause shown but deputy commissioners, not being Article V judges, are not covered by such provisions. (See Section 6 of this analysis for further discussion.) The bill provides that an order of a deputy commissioner shall be considered an order of a court of competent jurisdiction for the purpose of obtaining medical records.

Section 12. The bill clarifies that on appeal, the court, in its discretion, may award an attorney's fee. (Current law states that the appellate court may "increase the attorney's fee" which could be interpreted to mean that the court may increase a fee previously granted at the hearing level.)

The bill also provides that if a deputy commissioner awards attorneys fees to the claimant based on a finding that the carrier acted in bad faith in handling the claim, the deputy commissioner must issue a separate order which expressly states the specific findings of fact upon which the determination of bad faith is based.

Section 13. Presently, carriers are required to offer to employers a co-insurance policy under which the employer pays 20 percent of benefits up to $2,500 or $5,000. The bill eliminates the requirement for a written rejection by the employer and provides that co-insurance shall be made available at the written request of the employer.

Section 14. Section 440.38(1) is amended to authorize an employer to secure the payment of workers' compensation by entering into a contract with an approved public utility self-insured program under s. 440.571. Rulemaking authority is provided to the division for this purpose. Section 440.571 is
created by section 19 of this bill. See section 19 of this analysis for further discussion.

Section 15. Presently, if an employee brings a suit against a third-party tortfeasor for an injury that resulted in workers' compensation being paid, the employer/carrier is entitled to reimbursement for 100 percent of compensation benefits paid. The employer/carrier does not share in the cost of the attorney's fees incurred by the claimant. The bill deducts from the reimbursement to the employer/carrier its pro rata share of the court costs and attorney's fees incurred by the employee. "Pro rata share" is defined as an amount equal to the percentage of the judgment which are costs and attorney's fees. For example, if the employer paid $40,000 in compensation, and the employee obtained a $100,000 judgment with a $40,000 (40%) attorney's fee, the employer would have 40% deducted from his reimbursement, netting the employer $24,000. The employee in this example would net $36,000.

Section 16. The bill authorizes the chief commissioner to recommend that the Governor consider removal of any deputy commissioner for cause.

Section 17. The bill requires the Division of Workers' Compensation to establish the minimum qualifications for rehabilitation service providers and to prepare a directory of approved providers. Employers and carriers would be required to use only those providers on the approved list. Certain exceptions are provided.

The Special Disability Trust Fund provides partial reimbursement to employer/carriers for compensation paid to an employee when an injury and a preexisting physical impairment merge to cause a disability. Presently, if a merger results in permanent total disability, the fund reimburses the employer for compensation in excess of the first 125 weeks of permanent total compensation. However, if a merger results in permanent total disability, the employer must pay permanent total compensation for 175 weeks before being reimbursed for excess compensation paid for temporary disability and medical benefits. As amended, upon a determination that merger caused permanent total compensation, the employer shall be immediately reimbursed for excess compensation paid for temporary compensation and medical benefits.

The bill also specifies that with regard to reimbursement from the Special Disability Trust Fund, rehabilitation services shall be considered remedial attendance (medical benefits) and shall be reimbursed in accordance with the formula for remedial attendance.

Section 18. Section 440.57 allows two or more employers to form a group self-insurance fund. This section also allows the plan to provide that each employer member shall be responsible for the first $100 of medical benefits due to each employee. The bill provides that the plan may provide that each employer shall be responsible for up to $500 of medical benefits due to each employee.

Section 19. Section 440.571 is created to authorize public utilities to assume by contract the workers' compensation liability of contractors and subcontractors employed by or on behalf of the utility when performing work on or adjacent to property owned or used by the public utility. Such arrangements have been approved in the past, but since there was no clear statutory authority the division has recently rescinded its
approval. The bill would clearly authorize public utility assumption of contractors' workers' compensation liability.

Section 20. Deletes the definition of "registered mail" which is no longer used in the chapter. The bill also repeals the provision that establishes job qualifications for the industrial safety consultant hired by the division.

Section 21. Effective date upon becoming law.

III. ECONOMIC IMPACT

A. PRIVATE SECTOR CONSIDERATIONS

Those persons over age 65 and receiving social security retirement benefits would no longer be disqualified from receiving wage-loss benefits. Social security retirement benefits would be considered primary and wage-loss benefits supplemental only, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable. Therefore, persons over age 65 could receive wage-loss benefits. However, persons between the age of 62 and 65 and receiving social security retirement benefits would, in some cases, receive less wage-loss benefits than currently paid, and in no case would they receive more. Presently, such persons have their wage-loss benefits reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. Therefore, such persons receive at least 50 percent of wage-loss benefits plus social security, with the total amount being equal to or greater than the amount of wage-loss benefits that would have been otherwise payable. Under the bill, wage-loss benefits are supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits otherwise payable.

The National Council on Compensation Insurance estimates that the total amount of wage-loss benefits paid would increase in the aggregate due to this change, which could increase workers' compensation rates by approximately 3 percent.

The National Council on Compensation Insurance has estimated that the new lump sum settlement provisions could increase overall compensation costs by 10 percent due to increased attorney involvement, over-compensation of minor injuries, determination of wage loss prior to rehabilitation, and compensation based on subjective criteria.

B. PUBLIC SECTOR CONSIDERATIONS

No substantial impact.

IV. COMMENTS

V. LEGISLATIVE HISTORY

A. ENACTED BILL

House Bill 1277 began as PCB 83-24 which was the proposed bill recommended by the Advisory Committee on Workers' Compensation appointed by the Speaker of the House of Representatives. The Advisory Committee had three substantive meetings on January 7, 14, and 21, 1983.

PCB 83-24 was heard by the Subcommittee on Property and Casualty Insurance of the Commerce Committee on April 11 and 12, 1983. Twenty-two amendments were adopted in subcommittee. Major issues concerned municipal pension plan offsets, attorney's fees in third-party suits, lump-sum settlements, and division approval
of rehabilitation providers. The subcommittee amendments were engrossed into the bill as PCB 83-24 Second Draft.

On April 19 and 26, 1983 the full Commerce Committee heard PCB 83-24. Seven amendments were adopted. As in subcommittee, the major areas of concern were municipal pension plan offsets, lump-sum settlements, and division approval of rehabilitation providers. The bill was approved, as amended, and introduced as HB 1277.

HB 1277 was referred to the Appropriations Committee which reported the bill favorably on May 19, 1983. The bill was then placed on the Calendar.

On May 30, 1983, HB 1277 was read for the second time and amended. The one amendment struck the language in the bill that provided for an offset from workers' compensation based on social security disability benefits. (The amendment was intended to maintain present law by striking language in the bill. However, the amendment was incorrectly engrossed so as to strike from present law the offset provisions.) House Bill 1277 was then passed by the House, as amended, 116-0 (HJ 784).

The Senate referred HB 1277 to the Commerce Committee which heard the bill on June 2, 1983. Sixteen amendments were adopted. One major issue was the placement of the burden on the employee to show that his inability to obtain employment is due to physical limitation and not due to economic conditions. Other important amendments included a requirement that deputy commissioners make a specific finding as to bad faith if a bad faith attorney's fee is awarded; a limitation on advance payments; and reinserting social security offset provisions inadvertently stricken by the House amendment. The bill was then placed on the Calendar and passed with all of the Commerce Committee amendments, 36-0 (SJ 752).

The House concurred in all of the Senate amendments and passed HB 1277, 105-9 (HJ 1146).

HB 1277 was presented to the Governor on June 15, 1983.

B. DISPOSITION OF COMPANION

There was no Senate companion.
I. SUMMARY:

A. Present Situation:

If an employee incurs an employment-related injury or disease, the employer must pay compensation to the employee as required by the Workers' Compensation Act, chapter 440, Florida Statutes. Chapter 440, Florida Statutes, underwent a major revision in 1979. The two major categories of changes were the adoption of a wage loss system of determining disability benefits and an increase in the administrative responsibilities of the Division of Workers' Compensation.

B. Effect of Proposed Changes:

For ease of understanding a section by section analysis of the bill follows:

Section 1. The bill specifies that persons are not covered under the workers' compensation law if they are performing labor under a court-ordered work program for conviction of driving under the influence of controlled substances as provided in section 316.193, Florida Statutes.

The bill also substantially revises the definition of a "volunteer" who is exempt from coverage under the workers' compensation law. Present law specifically exempts from coverage only those volunteers who serve in private nonprofit agencies and federal programs. (Although present law does not specifically exempt other kinds of volunteers, it implicitly exempts anyone who is not an "employee" as defined, which excludes most volunteer arrangements.) The bill exempts from coverage anyone who is a volunteer, except volunteer workers for the state, county, city, or other governmental entity. The bill also provides that a person not receiving monetary remuneration for his services shall be presumed to be a volunteer unless there is substantial evidence that valuable consideration was intended by both the employer and employee.

The definition of "self-insurer" is amended by the bill to include public utilities which assume by contract the liabilities of contractors or subcontractors pursuant to s. 440.571.

Section 2. Section 440.021 is amended to conform to the change made in section 6 of the bill which revises the procedure for the issuance of advisory opinions by the division.

Section 3. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions against an insurer for violations of certain unfair insurance practices, (s. 624.155, Florida Statutes). The bill provides that the new
civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.

Section 4. The bill rewrites s. 440.13, the section specifying the requirements for providing medical services to employees. Major changes include the following:

1. Currently medical fees are "limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living." A three-member panel determines a maximum fee schedule for this purpose. There is currently only one fee schedule applicable statewide. The current schedule is set at the 66 2/3 percentile of the range of charges for a particular service, based on data submitted to the panel. The statute is amended to more clearly authorize current practice by specifying that there must be one statewide schedule, and that the panel must establish a percentile upon which a schedule of maximum reimbursement is calculated. The bill also changes the membership of the panel which sets the fee schedule. Currently, the panel is composed of the Insurance Commissioner, the Secretary of Labor and Employment Security, and the state medical consultant of the Division of Workers' Compensation. As proposed, the panel will consist of the Insurance Commissioner and two members to be appointed by the Governor, one representing employees and one representing employers.

2. Adding an express requirement that medical services to an employee be "medically necessary" as defined.

3. Adding a requirement that health care providers provide the division with such additional information with respect to the treatment that the division may reasonably request as part of its investigation.

4. Providing an express limitation that health care providers shall be paid solely by the employer/carrier.

5. Adding definitions for "peer review committee," "physician," "health care provider," "medically necessary," and "health care facility" for purposes of the entire section.

Section 5. Section 440.15, Florida Statutes, specifies the method for computing disability benefits. The bill makes the following changes:

1. Florida law provides for wage-loss benefits to be paid to injured workers who return to work following an injury and who receive less compensation than they did prior to their injury (s. 440.15(3), Florida Statutes. Under this law, a worker is paid 95 percent of the difference between 85 percent of his or her average weekly wage earned after the injury. This is intended to encourage injured workers to return to work following their injuries; benefits are based upon the actual loss that a worker suffers from his or her job-related injury.

In Regency Inn v. Johnson, 7FLW 1285, 7 FLW 2049, 7FLW 2507 Fla. (1st DCA 1982), the First District Court of Appeal held that an injured worker who was unable to return to work because there were no jobs available was entitled to wage-loss benefits.

A similar issue has developed with respect to temporary partial disability benefits. These benefits are payable to a worker who is able to return to limited work and whose condition is susceptible of improving. In Holiday Care Center v. Scriven, 418 So.2d 322 (Fla. 1st DCA 1982), the court held that a worker
who is released by a doctor to return to work and who is unable to find work is entitled to temporary partial wage-loss benefits. This is a judicial creation which is not provided for in the workers' compensation law. Prior to this decision, an employer/carrier could stop making benefit payments at the time the worker is released from his or her doctor to return to work.

The bill addresses both of these issues by requiring the injured worker to show that his inability to find work is due to his injury and not because of poor economic conditions or the unavailability of employment.

2. Presently wage-loss benefits terminate when the employee reaches age 65 and becomes eligible for social security retirement benefits. At age 62, wage-loss benefits are reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. In lieu of these provisions, social security retirement benefits would be considered primary, and wage-loss benefits secondary, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable.

3. The bill provides that temporary partial disability benefits be treated the same as wage-loss benefits with regard to reductions in compensation due to receipt of unemployment compensation. (Temporary partial disability benefits are computed the same way as wage-loss benefits, but are paid prior to maximum medical improvement).

4. Current law provides for a minimum $20 per week payment of compensation. Current law also provides that if Social Security disability benefits are received by the claimant, compensation benefits shall be reduced so that the sum of both benefits does not exceed 80% of the employee's average weekly wage. The bill provides that the $20 minimum compensation requirement does not apply if compensation is reduced due to receipt of social security disability benefits. (This changes current case law.)

Section 6. The bill makes the following changes to section 440.185, relating to reports of injury:

1. The division is currently required to evaluate every claim for benefits and to issue an advisory opinion to the parties as to the entitlement to benefits. The advisory opinion is included in the case file and may be considered by the deputy commissioner. As proposed, this procedure would be less formalized, so that the division's opinion is not considered by the parties to be adjudicatory. In particular, the division would "attempt to resolve the claim and review the controversy promptly and shall communicate the results of any claims investigation along with its recommendations to the parties." (The repeal of current language is in section 7 of the bill.)

2. Increases the time for reporting of an injury by the employer to the division from 7 days to 10 days, (but maintains the requirement that the employer report an injury to the carrier within 7 days.)

3. Presently, neither the division nor the deputy commissioners are authorized to obtain the medical records of an employee without a release.

Section 7. The following changes are made to s. 440.19, relating to the filing of claims.
1. Current language requiring the division to issue an advisory opinion when a claim is filed is repealed. (See section 2, above, for the alternative procedure.)

2. Provides that rehabilitation services are a separate benefit distinct from medical services for purposes of the statute of limitations.

3. Case law holds that a claim by a physician against a carrier for reimbursement is subject to the four-year statute of limitations for breach of contract rather than the two-year statute of limitations in chapter 440 applicable to workers' compensation claimants. The bill provides that claims for reimbursement by providers of medical benefits be subject to the two-year statute of limitations in chapter 440.

4. Deletes the requirement that the social security number of the employer be contained in a compensation claim.

5. Current law requires claims to state specifically the type and amount of benefits claimed. As proposed, if a timely claim is dismissed for lack of specificity, the statute of limitations would be tolled for sixty days.

Section 8. In 1979, one of the major reforms of the workers' compensation law was a significant restriction in parties' ability to settle or "wash-out" a claim with a lump sum payment. The intent of the present law is expressed in s. 440.20(12)(a) which states, "It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he receive disability or wage-loss payments on a periodic basis." Present law prohibits in all cases the payment of a lump sum in exchange for the release of an employer's liability for future medical expenses. For future disability payments, lump sum settlements are prohibited until 6 months after the date of maximum medical improvement has been reached.

The bill would exempt from the lump sum settlement restrictions those cases in which the employer or carrier has initially filed a written notice to controvert and has denied that a compensable accident or injury has occurred, and the deputy commissioner finds a justiciable controversy as to compensability. The bill also provides that notwithstanding the attorney's fee section, s. 440.34, the claimant shall be responsible for payment of his own attorney's fees in a case settled under this subsection. The new lump sum settlement provisions are repealed on July 1, 1986.

The bill increases the discount factor from 4 percent to 8 percent for computing the present value of lump sum payments of compensation.

Current law provides for a 12 percent interest penalty if compensation is not paid when due plus a 10 percent punitive penalty if compensation is not paid within 14 days after it becomes due. As amended, for each of these penalties the minimum penalty would be five dollars. (For example, if the 12% penalty equaled three dollars, the carrier would be required to pay five dollars.)

The bill also provides that either a deputy commissioner or chief commissioner (rather than a deputy commissioner or the division) be required to approve informally any advance payment of compensation not in excess of $2,000.

Section 9. The following changes are made to section 440.25, relating to the procedure with respect to claims:
1. Authorizes the chief commissioner, rather than the division, to choose the site of venue for injuries occurring outside the state.

2. Provides that the chief commissioner, rather than the division, receive reports from deputy commissioners of cases which are not determined within 30 days of final hearing.

3. Provides that an appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in section 57.081(1).

Section 10. The bill authorizes the chief commissioner to designate the manner in which hearings are recorded and reported.

Section 11. Presently, deputy commissioners are not authorized to obtain medical records of a claimant without a release from the claimant. Various sections of the Florida Statutes authorize "a court of competent jurisdiction" to order the production of medical records upon good cause shown, but deputy commissioners, not being Article V judges, are not covered by such provisions. (See Section 6 of this analysis for further discussion.) The bill provides that an order of a deputy commissioner shall be considered an order of a court of competent jurisdiction for the purpose of obtaining medical records.

Section 12. Current law does not allow the claimant to recover his or her attorney's fee from the employer/carrier, with certain limited exceptions (s. 440.34, F.S.). Attorney's fees may be awarded if the carrier has acted in "bad faith". The statute defines bad faith as conduct by the carrier in the handling of a claim which amounts to fraud, malice, oppression, or willful, wanton, or reckless disregard of the rights of the claimant. The statute further provides that any finding of bad faith must be made by the deputy commissioner in a separate fact-finding proceeding.

The courts have interpreted "bad faith" to include situations in which the carrier disapproves or rejects a claim because of technical matters. Also, deputy commissioners have awarded bad faith attorney's fees without holding a separate hearing on the matter and in some cases, fees have been awarded even though the issue was not discussed before the deputy commissioner. The First District Court of Appeal has per curiam affirmed these awards; a per curiam decision is not appealable to the Supreme Court.

This bill addresses this issue by requiring the deputy commissioner to issue a separate order, specifying the facts upon which any determination of "bad faith" is based.

The bill also clarifies that on appeal, the court, in its discretion, may award an attorney's fee. (Current law states that the appellate court may "increase the attorney's fee" which could be interpreted to mean that the court may increase a fee previously granted at the hearing level.)

Section 13. Presently, carriers are required to offer to employers a co-insurance policy under which the employer pays 20 percent of benefits up to $2,500 or $5,000. The bill eliminates the requirement for a written rejection by the employer and provides that co-insurance shall be made available at the written request of the employer.

Section 14. The bill authorizes certain employers to secure payment of compensation by entering into contracts with a self-insured public utility.
Section 15. Presently, if an employee brings a suit against a third-party tortfeasor for an injury that resulted in workers' compensation being paid, the employer/carrier is entitled to reimbursement for 100 percent of compensation benefits paid. The employer/carrier does not share in the cost of the attorney's fees incurred by the claimant. The bill deducts from the reimbursement to the employer/carrier its pro rata share of the court costs and attorney's fees incurred by the employee. "Pro rata share" is defined as an amount equal to the percentage of the judgment which are costs and attorney's fees. For example, if the employer paid $40,000 in compensation, and the employee obtained a $100,000 judgment with a $40,000 (40%) attorney's fee, the employer would have 40% deducted from his reimbursement, netting the employer $24,000. The employee in this example would net $36,000.

Section 16. The bill authorizes the chief commissioner to recommend that the Governor consider removal, of any deputy commissioner for cause.

Section 17. The bill requires the Division of Workers' Compensation to establish the minimum qualifications for rehabilitation service providers and to prepare a directory of approved providers. Employers and carriers would be required to use only those providers on the approved list. Certain exceptions are provided.

The Special Disability Trust Fund provides partial reimbursement to employer/carriers for compensation paid to an employee when an injury and a preexisting physical impairment merge to cause a disability. Presently, if a merger results in permanent total disability, the Fund reimburses the employer for compensation in excess of the first 175 weeks of permanent total compensation. The employer is also reimbursed for 50% of the first $10,000 of compensation paid for temporary disability and medical benefits. However, if merger results in permanent total disability, the employer must pay permanent total compensation for 175 weeks before being reimbursed for excess compensation paid for temporary disability and medical benefits. As amended, upon a determination that merger caused permanent total compensation, the employer shall be immediately reimbursed for excess compensation paid for temporary compensation and medical benefits.

The bill also specifies that with regard to reimbursement from the Special Disability Trust Fund, rehabilitation services shall be considered remedial attendance (medical benefits) and shall be reimbursed in accordance with the formula for remedial attendance.

Section 18. Section 440.57 allows two or more employers to form a group self-insurance fund. This section also allows the plan to provide that each employer member shall be responsible for the first $100 of medical benefits due to each employee. The bill provides that the plan may provide that each employer shall be responsible for up to $500 of medical benefits due to each employee.

Section 19. This section allows self-insured public utilities to assume by contract the liabilities of contractors and subcontractors employed by the public utility.

Section 20. Deletes the definition of "registered mail" which is no longer used in the chapter. The bill also repeals the provision that establishes job qualifications for the industrial safety consultant hired by the division.

Section 21. Effective date of October 1, 1983.
II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Injured workers will now have the burden of showing that his or her inability to find work is due to a comparable injury and not because of poor economic conditions. The fiscal impact of this change will depend upon the economic conditions at a given time.

Those persons over age 65 and receiving social security retirement benefits would no longer be disqualified from receiving wage-loss benefits. Social security retirement benefits would be considered primary and wage-loss benefits supplemental only, the sum of the two not to exceed the amount of wage-loss benefits otherwise payable. Therefore, persons over age 65 could receive wage-loss benefits. However, persons between the age of 62 and 65 and receiving social security retirement benefits would, in some cases, receive less wage-loss benefits than currently paid, and in no case would they receive more. Presently, such persons have their wage-loss benefits reduced by the amount of social security retirement benefits received, not to exceed 50 percent of the employee's wage-loss benefits. Therefore, such persons receive at least 50 percent of wage-loss benefits plus social security, with the total amount being equal to or greater than the amount of wage-loss benefits that would have been otherwise payable. Under the bill, wage-loss benefits are supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits otherwise payable.

The National Council on Compensation Insurance estimates that the total amount of wage-loss benefits paid would increase in the aggregate due to this change, which could increase workers' compensation rates by approximately 3 percent.

Requiring the deputy commissioner to issue a separate order in cases in which "bad faith" attorney's fees are awarded may decrease the number of cases in which such awards are made. An industry spokesman stated that approximately $231,775 in "bad faith" attorney's fees have been awarded since 1980.

The National Council on Compensation Insurance has estimated that the new lump sum settlement provisions could increase overall compensation costs by 10 percent due to increased attorney involvement, over-compensation of minor injuries, determination of wage loss prior to rehabilitation, and compensation based on subjective criteria.

B. Government:

No substantial impact.

III. COMMENTS:

None.

IV. AMENDMENTS: