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# 1977 WORKMEN'S COMPENSATION LEGISLATION

STANLEY JAMES BRAINERD\*

## I. LEGISLATIVE HISTORY

Workmen's compensation has been a part of Florida law since 1935.<sup>1</sup> Despite periodic revisions,<sup>2</sup> the basic concept of compensating the injured worker for his loss of wage-earning power remains intact.<sup>3</sup>

During the months between the 1976 and 1977 legislative sessions, the problems associated with workmen's compensation were the subject of intensive study by both the Senate and House Commerce Committee staffs. In addition, each standing committee on commerce conducted separate hearings on workmen's compensation. In the senate, the hearings were conducted at the request of Senate President Lew Brantley. On February 25, 1977, he asked that a select subcommittee of the Senate Commerce Committee be appointed to conduct a "crash study and report on some of the crisis problems in the Florida insurance industry . . . ."<sup>4</sup> The subcommittee was appointed by Senator W.D. Childers, Chairman of the Senate Commerce Committee, and met in Tallahassee on March 29 and 30, 1977.

At these meetings, representatives of business, labor, government, and the legal profession presented extensive testimony concerning the problems associated with workmen's compensation. The testimony in favor of placing restrictions on the workmen's compensation system addressed four general areas of concern: (1) soaring premium rates;<sup>5</sup> (2) high attorney's fees;<sup>6</sup> (3) excessive use of bene-

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1. Ch. 17,481, 1935 Fla. Laws 1456, as amended by ch. 17,482, 1935 Fla. Laws 1495, and ch. 17,483, 1935 Fla. Laws 1496.

2. The last major revision occurred in 1974. House Bill 3096, ch. 74-197, 1974 Fla. Laws 542.

3. Workmen's compensation laws have as their basic premise the idea that work-related disability should be compensated because it adversely affects earning power. A. LARSON, *WORKMEN'S COMPENSATION* § 2.40 (desk ed. 1974).

4. Press release issued by the Senate Information Service on February 25, 1977.

5. Testimony at the subcommittee meeting indicated that industry thought that premium rates were too high. Jon Shebel, chief lobbyist for Associated Industries of Florida, stated that "[d]uring the 1974 Session of the Legislature, a bill was passed . . . which made massive revisions to the Florida Workmen's Compensation law . . . . Several provisions of this bill are the main reasons for the drastic increases in workmen's compensation premiums in Florida during the past several years." Fla. S., Select Subcommittee on Crisis Problems in the Florida Insurance Industry, statement by J. Shebel at 1 (Mar. 29, 1977) (on file with committee).

fits;<sup>7</sup> and (4) fraudulent claims.<sup>8</sup> Testimony in favor of less restrictive legislation was given by members of the Florida Bar and representatives of labor. This testimony suggested a need for more benefits for the injured worker. These speakers also expressed opposition to any proposal that would tamper with the self-executing character of the act. Members of the Bar argued that the self-executing character of the act was essential and contended that the attorneys' fees paid in the previous year to those representing workmen's compensation claimants were but a small percentage of the total benefits paid.<sup>9</sup>

A tentative draft of a comprehensive workmen's compensation bill was distributed at the meeting,<sup>10</sup> and those in attendance were invited to make comments, criticisms, and suggestions. This draft contained provisions excluding from coverage injured employees having a blood alcohol level of .10% at the time of their injury<sup>11</sup> and injured employees collecting unemployment compensation.<sup>12</sup> The bill proposed changing the manner of computing benefits so that no judge of industrial claims could make an award for disability greater than that which the testimony of an examining physician suggested was appropriate.<sup>13</sup> Up to 100% subrogation by the insurer was to be allowed in actions against third party tortfeasors,<sup>14</sup> and payments of compensation would be reduced by at least 50% if the employee unreasonably refused to be rehabilitated.<sup>15</sup>

The draft also provided that attorneys' fees would be awarded on the basis of a sliding scale,<sup>16</sup> that judges of industrial claims would

6. "Overruling a judge of industrial claims who heard the facts tried first-hand, Florida's three-man Industrial Relations Commission ordered an employer to pay a lawyer a \$250 fee for his legal acumen in obtaining an insured worker benefits costing \$40.32." Bradford, *Four Year Court Battle Goes On*, FLA. F., Sept. 1976, at 8.

7. Testimony before the subcommittee indicates that employers have been told by officials in the State Bureau of Workmen's Compensation that there is no prescribed limit on the number of times a man can be permanently injured for purposes of being compensated under the Florida Workmen's Compensation Act. Bradford, *The Man Who Died Twice*, FLA. F., Oct. 1976, at 10. This article was presented into the record of the subcommittee meeting.

8. *Double Benefits—Double Trouble*, FLA. F., Aug. 1976, at 11.

9. The 394,964 cases processed in 1976 cost approximately \$230,000,000; of this amount \$127,000,000 represented compensation payment and \$103,000,000 represented medical treatment. By comparison, the \$20,699,337 paid out in claimants' attorneys' fees represented about 8%. Florida Dep't of Commerce, *Facts About Workmen's Compensation, Highlights for Fourth Quarter 1976* (1977).

10. Tentative draft of Fla. SB 1082, #6-932A-7, § 2 (1977).

11. *Id.*

12. *Id.* § 5.

13. *Id.* § 7.

14. *Id.* § 12.

15. *Id.* § 14.

16. *Id.* § 10.

be chosen from a list of persons nominated by the Appellate District Judicial Nominating Commission,<sup>17</sup> and that the penalty for fraud in compensation claims would be increased from a second-degree misdemeanor to a third-degree felony.<sup>18</sup> As a result of the information received at the subcommittee meetings and the responses received concerning the tentative draft, Senate Bill 1082 was introduced and referred to the Senate Commerce Committee.<sup>19</sup> On May 9, 1977, the Commerce Committee discussed the bill, heard testimony, and modified the bill to include the provisions of Senate Bills 1171, 1177, and 35.<sup>20</sup>

The most controversial provision of Senate Bill 1082 contained language that would have eliminated compensation for diminution of wage-earning capacity in cases of permanent partial disability. This language provided that for unscheduled injuries, the compensation awarded

shall be 60 percent of the injured employee's average weekly wage for such number of weeks as the injured employee's percentage of disability is of ~~400-350~~ weeks; provided, however, that for purposes of this paragraph "disability" means either physical impairment or diminution of wage earning capacity, whichever is greater.<sup>21</sup>

There was immediate opposition to this provision from labor and from lawyers. Their testimony before the select subcommittee and the full Senate Commerce Committee indicated that this provision would be particularly unfair to persons who earn their livelihood doing manual labor. It was noted that to an uneducated and unskilled laborer, a 5% physical impairment of the back may result in a complete loss of wage-earning capacity if he is no longer able to do manual labor.

In response to this testimony, members of the Commerce Committee amended this provision to read that the compensation awarded

shall be 60 percent of the injured employee's average weekly wage for such number of weeks as the injured employee's percentage of

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17. *Id.* § 13.

18. *Id.* § 11.

19. FLA. S. JOUR. 212 (Reg. Sess. 1977).

20. *Id.* at 366. Senate Bill 1171 contained provisions formerly found in the Workmen's Compensation Rules of Procedure. Senate Bill 1177 contained language eliminating the simultaneous receipt of permanent partial workmen's compensation benefits while receiving unemployment benefits. Senate Bill 35 set standards for attorneys' fees in workmen's compensation cases.

21. Tentative draft, #6-932A-7, § 5, at 7 (1977).

disability is of 400-350 weeks; provided, however, that for purposes of this paragraph "disability" means either physical impairment or diminution of wage-earning capacity, whichever is greater. If the disability of an employee in unscheduled injuries is 10% or more of the body as a whole, the industrial judge may consider the impairment of wage-earning capacity. In doing so, he must consider the injured worker's physical condition, age, industrial history, education and inability to obtain a type of work which he can do insofar as affected by the injury. If the industrial judge makes an award based on diminution of wage-earning capacity, he shall make a finding of fact based on the above criteria, setting forth the justification of any award based on diminution of wage-earning capacity.<sup>22</sup>

With this amendment, the bill was voted out of committee as a committee substitute and placed on the Senate Calendar.<sup>23</sup>

On May 16, 1977, Committee Substitute for Senate Bill 1082 (CS for SB 1082) was placed on the Special Order Calendar<sup>24</sup> and heard by the full senate. The senate adopted several amendments<sup>25</sup> before final passage, the most controversial of which was an amendment reinstating the language found in the original Senate Bill 1082 eliminating compensation for diminution of wage-earning capacity in cases of permanent partial disability.<sup>26</sup>

On May 23, 1977, CS for SB 1082 was received by the house of representatives, where it was referred to the House Commerce Committee.<sup>27</sup> This bill finally died in the House Commerce Committee without having been heard.<sup>28</sup>

While CS for SB 1082 was advancing through the legislative process, another senate bill relating to workmen's compensation was also proceeding through the system. Senate Bill 343, which would eventually be used as the vehicle for passing the major workmen's compensation bill enacted in 1977, began as a simple bill exempting from the definition of "employee" anyone who acted as a real estate

22. The original amendment by Senator Barron provided that diminution of wage-earning capacity could be considered only if the disability was 15% or more. This was further amended by Senator Ware so that diminution could be considered if the disability of the employee was 10% or more. See Commerce Committee records on Senate Bill 1082.

23. FLA. S. JOUR. 212 (Reg. Sess. 1977).

24. *Id.* at 395.

25. Other amendments clarified the relationship between workmen's compensation adjudications and the Administrative Procedure Act, provided for a joint underwriting plan for workmen's compensation, and provided for a rate rollback. *Id.* at 398-400.

26. *Id.*

27. FLA. H.R. JOUR. 657 (Reg. Sess. 1977).

28. LEGISLATIVE INFORMATION DIVISION, JOINT LEGISLATIVE MANAGEMENT COMMITTEE, HISTORY OF LEGISLATION, 1977 REGULAR SESSION, FLORIDA LEGISLATURE 356 (1977).

salesman or agent, if remunerated solely by commission.<sup>29</sup> The Senate Commerce Committee amended this bill to make it apply to anyone remunerated solely by commission. That amendment failed, and the full senate approved the bill on May 9, 1977, and sent it to the house of representatives.<sup>30</sup> The house of representatives received it on May 13, 1977, and referred it to the House Commerce Committee.<sup>31</sup> On May 26, 1977, it was withdrawn from the House Commerce Committee and placed on the House Calendar.<sup>32</sup> It then waited on the House Calendar until June 2, 1977, when it was used as a vehicle for the major bill.

Meanwhile, the house of representatives was also active in the workmen's compensation area. The House Commerce Committee has a standing Labor Subcommittee charged with the task of monitoring workmen's compensation. This subcommittee received recommendations from a special advisory council appointed by the chairman of the House Commerce Committee on March 18, 1977. The special advisory council had been formed specifically to study workmen's compensation and to make recommendations to the subcommittee.<sup>33</sup> This bill, containing provisions similar to those in the tentative senate draft, was accepted by the House Commerce Committee, introduced as House Bill 2344, and referred to the House Appropriations Committee on May 24, 1977.<sup>34</sup>

Both major bills were in house committees by the end of May.<sup>35</sup> Technically, both bills died in committee at the end of the session, but the concepts that they contained were incorporated into another bill.<sup>36</sup> On May 26, 1977, Senate Bill 343 was withdrawn from the House Commerce Committee and placed on the House Calendar.<sup>37</sup> On June 2, 1977, it was amended to include the provisions contained in House Bill 2344<sup>38</sup> and much of the language contained in CS for

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29. Fla. SB 343 (1977). Senate Bill 132, also passed in the 1977 session, provides that if a child is ordered to work for a supervised work program in order to make restitution for damages, the child shall not be covered by the provisions of workmen's compensation. This act was signed into law on June 23, 1977, and codified at FLA. STAT. § 39.11(2)(f) (1977).

30. FLA. S. JOUR. 351 (Reg. Sess. 1977).

31. FLA. H.R. JOUR. 558 (Reg. Sess. 1977).

32. *Id.* at 780.

33. Press release from Representative John R. Forbes, Chairman of the House Committee on Commerce, March 18, 1977.

34. Fla. H.R., Committee on Commerce, Staff Report (May 25, 1977) (on file with committee).

35. FLA. H.R. JOUR. 713 (Reg. Sess. 1977).

36. CS for SB 1082 died in the House Commerce Committee on June 3, 1977. House Bill 2344 died in the House Appropriations Committee on June 3, 1977. See LEGISLATIVE INFORMATION DIVISION, *supra* note 28, at 356, 546.

37. See FLA. H.R. JOUR. 780 (Reg. Sess. 1977).

38. *Id.* at 1055-60. However, a provision contained in House Bill 2344 requiring the carrier

SB 1082.<sup>39</sup> After passage in the house, the senate concurred, and Senate Bill 343 was enrolled.<sup>40</sup> It was signed into law by Governor Askew on June 20, 1977, as Chapter 77-290, Laws of Florida.<sup>41</sup>

## II. ANALYSIS

The primary goal of the 1977 workmen's compensation legislation was to reduce premium rates without reducing the benefits to injured workers.

### A. Exclusions

To accomplish this goal, several exclusions from coverage were modified or created. One such exclusion was found in the original Senate Bill 343. Section 440.02(2), Florida Statutes, was amended to exclude from the definition of "employee" an individual who agrees in writing to perform services as a real estate agent or salesman when those services are without supervision and performed for remuneration solely by commission. That class of employee had been required to be covered even though the agents were in some instances considered independent contractors.<sup>42</sup>

A second exclusion deals with injuries caused primarily by intoxication. Florida law provides that workmen's compensation is not payable if the injury is occasioned primarily by the intoxication of the employee.<sup>43</sup> But former section 440.26(3), Florida Statutes,<sup>44</sup> contained a presumption that, absent substantial evidence to the contrary, the injury was presumed not to have been caused primarily by the intoxication of the injured employee. A problem often arose when there were no witnesses to an injury-causing accident. Many injured employees were found to have a very high blood alcohol level, but it was difficult, lacking eyewitness evidence to the contrary, to prove that intoxication was the primary cause of the injury. A blood alcohol level of 0.10% now creates a presumption, in the absence of substantial evidence to the contrary, that the injury was occasioned primarily by the intoxication of the em-

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to investigate all reports of permanent partial and permanent total disability, § 4, was not included in the final draft.

39. The major differences between CS for SB 1082 and SB 343 will be explored in the analysis that follows this section.

40. FLA. S. JOUR. 799-804 (Reg. Sess. 1977).

41. See 1977 Fla. Laws 1284.

42. The test appears to be the manner of compensation and the amount of control exercised by the broker. *Florida Indus. Comm'n v. Schoenberg*, 117 So. 2d 538 (Fla. 3d Dist. Ct. App. 1960).

43. FLA. STAT. § 440.09(3) (1977).

44. (1975).

ployee.<sup>45</sup> This is similar to the language of Committee Substitute for Senate Bill 1082.<sup>46</sup>

The senate version (CS for SB 1082) and the house version (House Bill 2344 as incorporated into Senate Bill 343) differed in their treatment of the intoxication presumption. The house version eliminated the presumption that the injury was not caused primarily by the intoxication of the injured employee.<sup>47</sup> The senate language retained the presumption against intoxication as the cause found in section 440.26(3), Florida Statutes, but added language saying that no such presumption will attach if it is shown that, at the time of the injury, the employee had a blood alcohol content of 0.10%.<sup>48</sup> Had the senate version passed, the presumption against intoxication would still be operative if the employee had less than 0.10% blood alcohol content. Since the house language is used in the new law, there is no longer a presumption that intoxication was *not* the primary cause of the injury if an employee has *less than* 0.10% blood alcohol content.

A third exclusion in the new law eliminates "double dipping," the practice of receiving full benefits under both workmen's compensation and unemployment compensation.<sup>49</sup> Under previous Florida law, a person receiving workmen's compensation benefits for temporary partial, temporary total, or permanent total disability could have his unemployment compensation benefits reduced.<sup>50</sup> There was, however, no statutory basis for reduction of workmen's compensation benefits if the injured employee was receiving unemployment compensation. Florida courts have held that a person can honestly say that he is ready, willing, and able to work for purposes of collecting unemployment compensation benefits even if he is disabled.<sup>51</sup> The new provision will allow benefits payable for temporary total disability to be reduced by the amount of any unemployment compensation benefits received.<sup>52</sup> The senate version differed from this approach in that workmen's compensation benefits for temporary partial and permanent total disabilities could also be reduced.<sup>53</sup>

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45. Ch. 77-290, § 2, 1977 Fla. Laws 1284.

46. Fla. SB 1082, as engrossed, § 2 (1977).

47. Ch. 17481, § 26, 1935 Fla. Laws 1456.

48. Ch. 77-290, § 8, 1977 Fla. Laws 1284.

49. See *Double Benefits—Double Trouble*, *supra* note 8.

50. Ch. 18402, 1936 Fla. Laws 1292, as amended by ch. 65-115, § 1, 1965 Fla. Laws 219.

51. "A claimant may honestly represent to the unemployment compensation agency that he is able to do some work if a job is made available to him. At the same time, with equal honesty, he might properly represent to the workmen's compensation agency that he was totally disabled during the same period because no one would give him a job in his then physical condition." *Edward v. Metro Tile Co.*, 133 So. 2d 411, 412 (Fla. 1961).

52. Ch. 77-290, § 4, 1977 Fla. Laws 1284.

53. *Id.* § 11.



Another exclusionary provision concerns permanent total disability. Even after the 1977 legislative changes, compensation may still be paid to an employee for the duration of a permanent total disability.<sup>54</sup> This compensation may be reduced in certain instances. For example, section 440.15(1)(d), Florida Statutes, provides for a reduction in permanent total benefits when the injured employee becomes rehabilitated and reenters the job market. A second example is set forth in section 440.15(10), Florida Statutes. Under that provision, state benefits may be reduced when the injured employee becomes eligible for benefits under the Federal Old-Age, Survivors and Disability Insurance Act.<sup>55</sup> Finally, section 440.28, Florida Statutes, provides that the judge of industrial claims may modify the amount of benefits awarded when there has been a change in the condition or where there has been a mistake in a determination of fact.

To support these provisions, the new law gives the Division of Labor in the Department of Commerce the authority to promulgate rules requiring an employee who is entitled to or is claiming benefits for permanent total disability, to report to his employer or carrier all earnings and social security income.<sup>56</sup> Willful failure to report earnings would remove the requirement that the employer or carrier pay benefits during the period that the information is withheld. The new law also requires that a claimant, upon demand by the Division of Labor, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to him.<sup>57</sup>

The final change in this area deals with the windfall received by some employees when they are injured through a third party's negligence rather than through negligence of their employer.<sup>58</sup> When an employee is injured in a work-related accident by someone other than his employer, the employer must still pay workmen's compensation benefits. Under previous law, however, the employer could only have recovered up to 50% of the benefits paid if the injured employee successfully sued the third-party tortfeasor.<sup>59</sup> Under the 1977 law, an employer may recover up to 100% of what he has paid to the injured worker in the form of benefits.<sup>60</sup>

54. FLA. STAT. § 440.15(1)(a) (1977).

55. 42 U.S.C. § 423 (Supp. V 1975).

56. See FLA. STAT. § 440.15(e)(2) (1977).

57. *Id.* § 440.15(10)(c).

58. Assuming that the tort system gives adequate redress for the injury, any additional benefits received from workmen's compensation, which are not returned to the employer or carrier, would represent overcompensation or a windfall to the injured worker.

59. Ch. 17481, 1935 Fla. Laws 1456, as amended by ch. 74-197, § 18, 1974 Fla. Laws 542.

60. Ch. 77-290, § 11, 1977 Fla. Laws 1284.

### B. Attorneys' Fees

The continuing increase in fees paid to claimant's attorneys was a major concern of many witnesses at the 1977 workmen's compensation hearings.<sup>61</sup> In Florida, workmen's compensation is designed to be a self-executing system. In order to prod recalcitrant employers and carriers into making prompt settlements of legitimate claims, the Workmen's Compensation Act provides that the employer or carrier may be required to pay the fee of the claimant's attorney when the employer or carrier has been late in making a payment or has unsuccessfully controverted a claim.<sup>62</sup> The claimant's attorney submits his fee and, if it is found to be reasonable<sup>63</sup> by the judge of industrial claims, the unsuccessful employer or carrier must pay the fee in addition to paying benefits to the claimant.

As a result of this law, Florida businesses last year paid almost \$20,000,000 in claimants' attorneys' fees.<sup>64</sup> In view of the large amount of money involved, many businessmen believe that the self-executing aspect of the law is being abused.<sup>65</sup> In response to the pressures from business leaders for a legislative solution, section nine of SB 343 included a combination of a sliding fee schedule and the standards set forth in case law.<sup>66</sup>

The attorney's fee is now based on a sliding scale of 25% of the first \$5,000 of the amount of benefits secured, 20% of the next \$5,000, and 15% of the remaining amount.<sup>67</sup> The fee must be approved by the judge of industrial claims. The judge may, in his discretion, increase or decrease the fee if the circumstances of the case warrant such action. In making that determination, the judge is to consider the following criteria:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (b) The likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude employment of the lawyer by others or cause antagonisms with other clients.

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61. See note 6 *supra*.

62. FLA. STAT. § 440.34(1) (1977).

63. *Id.*

64. In 1976, attorneys' fees totalling \$20,699,337 were awarded. See note 9 *supra*.

65. Bradford, *Excessive Legal Fees, The Rape of Worker's Comp Must End!*, FLA. F., May 1976, at 41.

66. *Lee Eng'r & Constr. Co. v. Fellows*, 209 So. 2d 454 (Fla. 1968).

67. FLA. STAT. § 440.34(1) (1977). Florida courts have held that the benefit secured by the attorney must have monetary significance before attorneys' fees will be awarded. *Basford v. Florida Power & Light Co.*, 246 So. 2d 1 (Fla. 1971).

- (c) The fee customarily charged in the locality for similar legal services.
- (d) The amount involved in the controversy and the benefits resulting to the claimant.
- (e) The time limits imposed by the claimant or the circumstances.
- (f) The nature and length of the professional relationship with the claimant.
- (g) The experience, reputation, and ability of the lawyer or lawyers performing the service.
- (h) The contingency or certainty of a fee.<sup>68</sup>

The senate version contained in CS for SB 1082 differed from this approach in three respects. First, the fee in the senate version was to be a *maximum*<sup>69</sup> of 25% of the first \$5,000, 20% of the next \$5,000, and 15% of the remainder.<sup>70</sup> Second, the fee was based on a percentage of the *award for compensation*<sup>71</sup> rather than the *benefits secured*.<sup>72</sup> In addition, the senate version would have had the fee *determined* by the judge of industrial claims rather than just approved.<sup>73</sup>

### C. Fraud

There was also concern in 1977 about the increasing rate of fraud in the workmen's compensation system.<sup>74</sup> Under previous Florida law, any person who willfully made a false or misleading statement for purposes of obtaining workmen's compensation benefits was guilty of a second-degree misdemeanor.<sup>75</sup> Effective July 1, 1977, this

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68. FLA. STAT. § 440.34(1)(a)-(h) (1977).

69. The Florida Workmen's Compensation Advisory Council has taken the position that the percentage should only be a guide and should never be construed to represent an absolute maximum or minimum. See Letter from John H. Lewis, Chairman of the Florida Workmen's Compensation Advisory Council, to participants in the Workmen's Compensation System (undated).

70. Ch. 77-290, § 10, 1977 Fla. Laws 1284.

71. Compensation is defined as "the money allowance payable to an employee or to his dependents . . ." FLA. STAT. § 440.02(11) (1977). Medical treatments are considered separate and apart from compensation. The penalty assessed under the workmen's compensation statute for failure to pay an award within the time allowed "could not be allowed on that portion of the award which covered past and future medical expenses . . . since the penalty is based on 'unpaid compensation'." *Brantley v. A D H Bldg. Contractors, Inc.*, 215 So. 2d 297, 299 (Fla. 1968).

72. "Benefits secured" would include the money allowance as well as any other benefits obtained.

73. Fla. CS for SB 1082, § 9 (1977).

74. See generally *Double Benefits—Double Trouble*, *supra* note 8.

75. Ch. 17481, § 37, 1935 Fla. Laws 1456, as amended by ch. 71-136, § 366, 1971 Fla. Laws 552.

offense was declared a first-degree misdemeanor and was expanded to include those persons who make a false or misleading statement for the purpose of denying a benefit.<sup>76</sup> Had the fraud language found in CS for SB 1082 been incorporated into law, this type of fraud would have been classified as a third-degree felony.<sup>77</sup>

#### D. Rules of Procedure

Of particular interest to the practitioner are the changes in the Workmen's Compensation Rules of Procedure. Since first approved by the Supreme Court of Florida in 1973,<sup>78</sup> the rules of procedure have governed workmen's compensation practice in this state. A number of the old rules, considered more substantive than procedural,<sup>79</sup> were not included when the new rules became effective July 1, 1977.<sup>80</sup> Many of these deleted rules were contained in Senate Bill 343 and now are a part of Florida's statutory law.<sup>81</sup>

#### E. Administrative Procedure Act

Senate Bill 343 provided that workman's compensation adjudications by judges of industrial claims and by the Industrial Relations Commission are exempt from the Administrative Procedure Act.<sup>82</sup>

#### F. Joint Underwriting Plan

That same bill also addressed the difficulties that many small and high-risk businesses have had in obtaining workmen's compensation coverage. Under the provisions of the new law, the Department of Commerce is given the authority to approve a joint underwriting plan.<sup>83</sup> Testimony before the senate indicated that this should be done "for the purpose of equitable apportionment or sharing among insurers of workers' compensation and employers' liability insurance."<sup>84</sup>

76. FLA. STAT. § 440.37 (1977).

77. Ch. 77-290, § 10, 1977 Fla. Laws 1284.

78. *In re Florida Workmen's Compensation Rules of Procedure*, 285 So. 2d 601 (Fla. 1973).

79. "The following Rules, presently part of the Workmen's Compensation Rules of Procedure, will be defeated when the new rules are presented to the Supreme Court for approval and adoption. These rules are considered to be substantive in nature." Letter from the Chairman of the Industrial Relations Commission to the Director, Division of Labor, Fla. Dep't of Commerce (Oct. 12, 1976).

80. *In re Workmen's Compensation Rules of Procedure*, 343 So. 2d 1273 (Fla. 1977).

81. Act of June 20, 1977, ch. 77-290, §§ 1, 3, 5, 6, 8, 1977 Fla. Laws 1284 (codified at FLA. STAT. §§ 440.02(2), (21), .13(1), (4), .20(5), (10), (11), (13), .25(4)(c), .29(1)(b) (1977)).

82. Act of June 20, 1977, ch. 77-290, §§ 12-15, 1977 Fla. Laws 1284 (codified at FLA. STAT. §§ 120.52(1)(d), .54(15), .57(a)(1), 440.021 (1977)).

83. Act of June 20, 1977, ch. 77-290, § 16, 1977 Fla. Laws 1284.

84. Testimony by C.C. Dockery, Executive Vice President, Florida Roofing, Sheet Metal

Such a plan may provide insurance to employers who are entitled to insurance but are unable to obtain it through the voluntary insurance market at standard rates. Once a plan is adopted, all insurers authorized to write workmen's compensation and employers' liability insurance in Florida are required to participate.<sup>85</sup>

### III. CONCLUSION

While the passage of Senate Bill 343 may help solve some of the problems associated with workmen's compensation, it is by no means the end of legislative efforts. On May 20, 1977, the senate adopted a resolution calling for the president of the senate to designate a standing committee of the senate to study workmen's compensation rates and report back its findings on possible ways of reducing such rates.<sup>86</sup> A similar study was ordered in the house. Thus, the debate over workmen's compensation continues in the Florida Legislature.

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and Air Conditioning Contractors Association, Inc., given before the Senate Commerce Select Subcommittee (March 29, 1977).

85. Prior to the 1977 legislative session, Florida law provided for three other joint underwriting plans: (1) Windstorm JUA, FLA. STAT. § 627.351(6)(b) (1977); (2) Automobile JUA, *id.* § 627.311; (3) Medical Malpractice JUA, *id.* § 627.351(6)(a). In addition to the Workmen's Compensation JUA, the legislature authorized a JUA for municipalities. *See* ch. 77-380, 1977 Fla. Laws 1619.

86. Fla. SCR 236, as amended. FLA. S. JOUR. 484 (Reg. Sess. 1977).