

2003

Session Law 03-412

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # <i>2003-412</i>	Sec. # <i>7</i>	LOF cite <i>440.093</i>
Prime Bill #	Comp./Sim. Bills <i>HB. 1387</i>	<i>SB 50-A</i>
JLHC Hist. Cites	Senate House	Comms. of Ref. Senate House

COMMITTEE RECORDS						
H/S	Committee	Year	Record Series, Folder title, etc.	Loc. Cite		✓
H	<i>State Admin</i>	<i>2003</i>	<i>PCB-11-03</i> <i>Prin file</i>	<i>19/335</i>		<input checked="" type="checkbox"/>
H	<i>Insur</i>	<i>2003</i>	<i>no meeting</i>	<i>17/345</i>		<input checked="" type="checkbox"/>
			<i>" " 4-3</i>	<i>14/345</i>		<input checked="" type="checkbox"/>
			<i>" " 7-7</i>			<input checked="" type="checkbox"/>
"	"	"	<i>Bill file - now on II</i>			<input checked="" type="checkbox"/>
S	<i>Executive</i>	"	<i>" " = SB 50-A</i>	<i>18/215</i>		<input checked="" type="checkbox"/>
			<i>no meeting file</i>			
<input type="checkbox"/> continued on reverse						

Senate/House Journals					
Page #	?	Date	Page #	?	Date

Committee/Floor Tapes					
H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation	
Record Series Title, folder title, etc.	Location Cite

Senate 0050. Relating to Workers' Compensation

S50-A GENERAL BILL/2ND ENG by Clary; (CO-SPONSORS) Alexander; Atwater (Identical 2ND ENG/H 0025-A, Similar H 0009-A)

Workers' Compensation, revises authorization to claim exemptions & requirements re submitting notice of election of exemption, revises provisions re contractors & subcontractors re liability for compensation, provides additional limitations on compensation for permanent total disability, revises provisions re timely pymt of compensation & medical bills & penalties for late pymt , etc Amends Chs 440, 627, 443 1715, 625 989, 626 9891, 921 0022, 946 523, 985 315
EFFECTIVE DATE 10/01/2003 except as otherwise provided

05/16/03 SENATE Filed, Introduced, referred to **Banking and Insurance**
-SJ 00014, On Committee agenda-- Banking and Insurance,
05/20/03, 10 30 am, 110-S

05/20/03 SENATE On Committee agenda-- Banking and Insurance, 05/20/03, 1 30
pm, 110-S, Favorable by- Banking and Insurance, YEAS 8
NAYS 4 -SJ 00079

05/21/03 SENATE Placed on Calendar, on second reading -SJ 00079, Placed on
Special Order Calendar -SJ 00079, Read second time -SJ 00037,
Amendment(s) failed -SJ 00039, Amendment(s) adopted
-SJ 00058, Ordered engrossed -SJ 00060

05/27/03 SENATE Read third time -SJ 00324, Passed as amended, YEAS 26
NAYS 13 -SJ 00324

05/27/03 HOUSE In Messages, Received -HJ 00185, Read second time -HJ 00186,
Amendment(s) adopted -HJ 00186, Read third time -HJ 00221,
Passed as amended, YEAS 81 NAYS 34 -HJ 00221

05/27/03 SENATE In returning messages, Was taken up -SJ 00328, Concurred
-SJ 00367, CS passed as amended, YEAS 25 NAYS 14
-SJ 00367, Ordered engrossed, then enrolled -SJ 00367

07/03/03 Signed by Officers and presented to Governor
07/15/03 Approved by Governor, Chapter No **2003-412**

House 1837: Relating to Workers' Compensation

H1837 GENERAL BILL/2ND ENG by Insurance; (CO-SPONSORS) Allen; Berfield; Clarke; Detert; Harrell; Jordan; Sansom (Compare H 0163, H 0927, H 1179, H 1247, H 1409, H 1539, H 1655, CS/CS/S 1132, S 1946, S 2282)

Workers' Compensation; revises authorization to claim exemptions & requirements re submitting notice of election of exemption, provides that corporate officer electing to be exempt may not receive benefits, specifies effect of criminal acts; provides for compensability of mental & nervous injuries; revises provisions re contractors & subcontractors re liability for compensation; provides conditions for applying for building permits, etc. Amends FS. EFFECTIVE DATE: 10/01/2003 except as otherwise provided

- 04/11/03 HOUSE Filed; Introduced, referred to State Administration
-HJ 00388; On Committee agenda-- State Administration,
04/14/03, 8:30 am, Reed Hall
- 04/14/03 HOUSE Favorable with CS amendment by- State Administration; YEAS 4
NAYS 0 -HJ 00393
- 04/21/03 HOUSE Pending review of CS -under Rule 6 3(b); Placed on Calendar
-HJ 00393
- 04/25/03 HOUSE Placed on Special Order Calendar, Read second time -HJ 00628;
Amendment(s) failed -HJ 00629; Amendment(s) adopted
-HJ 00629; Amendment(s) reconsidered, withdrawn -HJ 00631,
-HJ 00644, Ordered engrossed -HJ 00648
- 04/28/03 HOUSE Read third time -HJ 00701; Amendment(s) adopted -HJ 00702;
Ordered engrossed -HJ 00703
- 05/01/03 HOUSE Passed as amended; YEAS 104 NAYS 10 -HJ 00975
- 05/01/03 SENATE In Messages; Received, referred to Banking and Insurance,
Appropriations Subcommittee on General Government;
Appropriations; Rules and Calendar -SJ 01056; Immediately
withdrawn from Banking and Insurance, Appropriations
Subcommittee on General Government, Appropriations, Rules and
Calendar -SJ 01035, Substituted for CS/CS/SB 1132 -SJ 01035;
Read second time -SJ 01035, Amendment(s) failed -SJ 01047;
Amendment(s) adopted -SJ 01047; Read third time -SJ 01053,
Passed as amended; YEAS 35 NAYS 5 -SJ 01053
- 05/01/03 HOUSE In returning messages
- 05/02/03 HOUSE Was taken up -HJ 01043, Refused to concur, requested Senate
to recede -HJ 01044
- 05/02/03 SENATE In returning messages, Died in returning Messages,
Link/Iden/Sim/Compare passed, refer to SB 50-A (Ch. 2003-412)

CS/HE 1837

Time

2005-412/2

4-15-10

CS/HB 1837 (F = INC. - 12)

TAPES

St. Address 4/4 100 BF 19/3367 417/1393

- H Floor 4/25 100

- " 4/25 100

S. Floor 5/1 ~~1238~~(205)

BF CS/CS/SB 1132

TAPES

13/2000 BRAIN - INS 4/15 CC NO ME 625/1072

NO BF H. F (111) 1.5 / Gen Gen 4/15 CC ME 18/2690 | 625/1031

BF SB 50-A

18/2000 L. Floor 5/1 NO ME ~~NO TAPES~~ 625/1072

S. Floor 5/1 1234/206

- H Floor 5/1 100

111 - 1

H Floor 5/1 100 417/1428

- H Floor 5/1 200

- " 5/1 300

S. Floor 5/1

SEL. CA - TAPES 117/1398

2/18 ~~1.3~~ P.B. ... 2 tapes

3/4 Claims Process 1 of 2 (+ PC - in step)

3/6 Benefits + Loss report + Fraud 2 Tapes

3/11 Fraud + Market Avail. Issues 2 tapes

- 3/13 H... - A ... + CONSTRUCTIVE INDUSTRIAL 2 tapes

- 3/18* CONSTRUCTIVE INDUSTRIAL

Round Table Dis. OF P... - 2 tapes

3/20 Proposed Law @ ... - 2 tapes

* MAKES ... TO ...

3/4 3/18
3/6 3/20
3/11
3/13

2003-412/8 990.10(1)(E)

H. sel. (MT ON WC 2003

w/ H Insur records

S. 19/3374

TAPES S. 414/1396

14 Tapes

PCB IN 03-02 HINS

2 Tapes

MF's 4/3/03 (2) " " S. 19 3413 414/1428 ✓

4/9/03 (2) " "

BF S. 19/3417 (HB 1837)

2003 House Floor Needed

HB 1837

4/25 2ND AMD Passed / Recon / W/D

4/28 3RD AMD Passed

5/1 Passed

SB 50-A

5/27 2ND + 3RD vend / AMDs Pass

HB 25-A

5/15 2ND r AMD Passed

5/27 3RD AMD Passed / Failed

PCB IN 03-02

2003 WORKERS' COMPENSATION BILLS – SIDE-BY-SIDE COMPARISON
HOUSE INSURANCE COMMITTEE

MARCH 31, 2003

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Exemptions	Revises construction exemptions – limit to 3 corporate officers who own at least 10%*	Same as Select Committee	Not addressed	Similar to Select Committee, but keeps exemptions for sole proprietors and partners, repeals all exemptions on 1/01/07, except sole proprietors	Similar to Select Committee	Same as Select Committee
Average Weekly Wage ("AWW")	Redefines "AWW" to be determined from the date of accident and based on actual wages**	Same as Select Committee	Changes procedural requirements	Not addressed	Not addressed	Not addressed
Redefines "accident"	Not addressed	Excludes toxic exposure unless shown by clear and convincing evidence that the exposure can cause the injury or disease sustained	Not addressed	Not addressed	Not addressed	Not addressed
Cumulative injuries	Not addressed	Must show causation and sufficient exposure	Changes procedural requirements	Not addressed	Not addressed	Not addressed
Permanent Total Disability – standards, including definition of "catastrophic injury"	Eliminates the social security disability income standard	Eliminates the social security disability income standard and otherwise redefines "permanent total disability"	Changes procedural requirements	Not addressed	Not addressed	Same as Select Committee

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Permanent Total Disability - duration	Ceases benefits at age 70 or 5 years after the date of injury, whichever is later	Same as Select Committee	Not addressed	Not addressed	Not addressed	Not addressed
Permanent Total Disability - Supplemental benefits	Stops supplemental benefits after age 62	Same as Select Committee	Not addressed	Not addressed	Not addressed	Not addressed
Death Benefits	Not addressed	Not addressed	Changes procedural requirements	Increases funeral expenses to \$10,000 and death benefit maximum to \$250,000	Increases funeral expenses to \$10,000 and death benefit maximum to \$200,000	Increases funeral expenses to \$10,000 and death benefit maximum to \$250,000
Impairment Benefits	Raises impairment benefits from 50% of the employee's compensation rate to 100%	Same as Select Committee, also makes other revisions	Changes procedural requirements	No benefits if receiving supplemental benefits, Sets impairment benefits at 2/3 of TTD compensation rate, lowers eligibility standard for supplemental benefits to 10% of impairment rating	No benefits if receiving supplemental benefits, Sets impairment benefits at 2/3 of TTD compensation rate, lowers eligibility standard for supplemental benefits to 10% of impairment rating	Same as Select Committee, lowers eligibility standard for supplemental benefits to 10% of impairment rating
Temporary Total Disability Benefits	Not addressed	Not addressed	Changes procedural requirements	Not addressed	Not addressed	Allows JCC to order TTD benefits for up to 260 weeks
Temporary Partial Disability Benefits	Not addressed	Not addressed	Changes procedural requirements	Not addressed	Not addressed	Allows JCC to order TPD benefits for up to 260 weeks
Employer Liability – Intentional Tort	Exempts employer from tort suit unless employer acts with actual intent to cause injury or death	Similar to Select Committee	Not addressed	Expands employer liability to include bad faith provisions, allows suit for retaliation	Expands employer liability to include bad faith provisions, allows suit for retaliation	Not addressed
Employer Liability – Horizontal Immunity	Applies employer's tort immunity to all employers on a jobsite	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Practice parameters	Requires AHCA to establish practice parameters for all practitioners and adds applicability to physical medicine and psychiatric treatment	Same as Select Committee	Not addressed	Not addressed	Not addressed	Not addressed
"Major contributing cause"	Work related accident must be more than 50 percent responsible for the injury and subsequent disability	Same as Select Committee	Changes procedural requirements	Not addressed	Not addressed	Not addressed
Other Medical Issues	Not addressed	Increases membership of 3-member panel to 5 member panel, revises provider choice provision, restricts medically necessary experimental, investigative, or research services to those approved by AHCA	Changes procedural requirements	Includes psychologists and accupuncturists in definition of physician, revises provider choice provisions, removes \$10 co-payment for medical treatment after maximum medical improvement	Includes psychologists in definition of physician, revises provider choice provisions, removes \$10 co-payment for medical treatment after maximum medical improvement	Doubles chiropractic treatment maximum to 36 visits or 16 weeks
Pharmacy choice	Not addressed	Eliminates the employee's option to choose pharmacist	Not addressed	Not addressed	Not addressed	Not addressed

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Medical provider reimbursement schedule	Raises reimbursement of non-hospital providers at least 125% of Medicare, require 3-member panel to rewrite schedules reducing existing per-diem hospital schedule by at least 15%, requires new schedules to be cost-neutral relative to existing schedules, allows negotiation of fees outside the schedule	Similar to Select Committee, also reduces pharmacy schedule, sets per diem charges prorated on a basis 6-hour periods, revises fee dispute process	Changes procedural requirements	Requires fee schedule to pay at least 100% of Medicare	Requires fee schedule to pay at least 100% of Medicare	Requires fee schedule to pay at least 150% of Medicare for non-surgical and 200% of Medicare for surgical procedures
Attendant care	Not addressed	Not paid until receipt of written request from physician, family member is limited to the per-hour value of such care	Changes procedural requirements	Not addressed	Not addressed	Not addressed
Independent Medical Exams (IME)	Not addressed	Requires insurer to pay for the first IME only, revises use of IMEs at hearing	Changes procedural requirements	IMEs provided at the expense of the carrier	IMEs provided at the expense of the carrier	Not addressed
Attorney fees	Eliminates hourly rates except for small-dollar claims	Eliminates hourly rates with one exception, other revisions	Authorizes additional \$2500 for medical treatment claims	Not addressed	Not addressed	Not addressed

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Appeals from decisions of Judges of Compensation Claims	Creates commission to hear appeals from decisions of Judges of Compensation Claims, commission rulings appealable to all DCAs rather than 1 st DCA only	Similar to Select Committee	Not addressed	Not addressed	Not addressed	Not addressed
Procedural rulemaking authority	Not addressed	Not addressed	Gives Supreme Court power to make procedural rules for JCCs	Not addressed	Gives Supreme Court power to make procedural rules for JCC	Not addressed
Other procedural requirements	Requires each petition to contain all issues that are ripe, due, and owing as of the filing date	Changes procedural requirements	Changes procedural requirements	Changes procedural requirements	Changes procedural requirements	Changes procedural requirements
Enforcement/Fraud	Increases administrative and criminal penalties for fraud, strengthens administrative powers with respect to employer and carrier noncompliance, requires DFS to report to Legislature re outstanding enforcement issues	Not addressed	Not addressed	Revises certain provisions	Not addressed	Not addressed
Judges of Compensation Claims	Not addressed	Not addressed	Removes JCC from DOAH, creates separate entity within DMS	Changes current membership of nominating commission for JCCs	Changes current membership of nominating commission for JCCs	Not addressed
Employee Assistance Office and Ombudsman	Not addressed	Not addressed	Abolishes EAO	Changes membership of nominating commission	Changes membership of nominating commission	Not addressed

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Competitive State Fund	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Creates State Mutual Company and allows it to set its own rates
Ratemaking	Not addressed	Not addressed	Not addressed	Opens information submitted to public record, goes to competitive loss cost ratemaking	Opens information submitted to public record, goes to competitive loss cost ratemaking	Appears to deregulate workers' comp rates unless CFO finds a non-competitive market, when market is not competitive, requires each carrier to submit its own rates for approval, opens information submitted to public record
Workplace Safety	Requires the Division of Workers' Comp to publicize free safety consultation programs, encourages carriers to do the same, authorizes safety premium credits for private and public employers, requires JUA policyholders to participate in safety programs	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
Joint Underwriting Association	Creates subplan for small employers with rates no higher than 125% of market, prohibits assessments against anyone other than JUA policyholders	Not addressed	Not addressed	Not addressed	Not addressed	Creates new residual market under CFO

19 3417
HIS 1837 2 of 3
7 COPIES

Subject	PCB IN 03-02-- House Select Committee Recommendations	Coalition Bill HB 163 by Mack SB 1206 by Alexander	HB 1179 by Ross	HB1409 by Antone	HB1539 by Fields	HB 1655 by Berfield SB 1946 by Clary
Effective date	Not addressed in Select Committee Report, 10/1/03 in PCB	10/1/03	Upon becoming law	1/1/04	1/1/04	7/1/03

*Also provided in HB 1247 by Rep Clarke

**Also addressed in HB 927 by Rep Troutman

CHAPTER 2003-412

Senate Bill No. 50-A

An act relating to workers' compensation; amending s. 440.02, F.S.; providing, revising, and deleting definitions; amending s. 440.05, F.S.; revising authorization to claim exemptions and requirements relating to submitting notice of election of exemption; specifying effect of exemption; providing a definition; amending s. 440.06, F.S.; revising provisions relating to failure to secure compensation; amending s. 440.077, F.S.; providing that a corporate officer electing to be exempt may not receive benefits; amending s. 440.09, F.S.; revising provisions relating to compensation for subsequent injuries; providing definitions; revising provisions relating to drug testing; specifying effect of criminal acts; creating s. 440.093, F.S.; providing for compensability of mental and nervous injuries; amending s. 440.10, F.S.; revising provisions relating to contractors and subcontractors with regard to liability for compensation; requiring subcontractors to provide evidence of workers' compensation coverage or proof of exemption to a contractor; deleting provisions relating to independent contractors; amending s. 440.1025, F.S.; revising requirements relating to workplace safety programs; amending s. 440.103, F.S.; providing conditions for applying for building permits; amending s. 440.105, F.S.; increasing criminal penalties for certain violations; providing sanctions for violation of stop-work orders and presentation of certain false or misleading statements as evidence; amending s. 440.1051, F.S.; increasing criminal penalty for false reports; amending s. 440.107, F.S.; providing additional powers to the Department of Financial Services relating to compliance and enforcement; providing a definition; providing penalties; amending s. 440.11, F.S.; providing exclusiveness of liability; revising provisions relating to employer and safety consultant immunity from liability; amending s. 440.13, F.S.; providing for practice parameters and treatment protocols; revising provisions relating to provider reimbursement; requiring revision of specified reimbursement schedules; providing for release of information; providing additional criteria for independent medical examinations; providing a definition; providing standards for medical care under ch. 440, F.S.; providing penalties; amending s. 440.134, F.S.; revising provisions relating to managed care arrangements; revising definitions; providing for assignment of a medical care coordinator; amending s. 440.14, F.S.; revising provisions relating to calculation of average weekly wage for injured employees; conforming cross-references; amending s. 440.15, F.S.; providing additional limitations on compensation for permanent total disability; providing a definition; specifying impairment benefits and providing for partial reduction under certain circumstances; deleting provisions relating to supplemental benefits; amending s. 440.151, F.S.; specifying compensability of occupational disease; providing a definition; amending s. 440.16, F.S.; increasing the limits on the amount of certain benefits paid as compensation for death; amending s. 440.185, F.S.; specifying duty of employer upon receipt of notice of injury or death; in-

for the purpose of this chapter be considered to be a death resulting from the accident causing the hernia.

(d) If an accident happens while the employee is employed elsewhere than in this state, which would entitle the employee or his or her dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in this chapter.

(4)(a) An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the acts described in s. 440.105 or any criminal act for the purpose of securing workers' compensation benefits. For purposes of this section, the term "intentional" shall include, but is not limited to, pleas of guilty or nolo contendere in criminal matters. This section shall apply to accidents, regardless of the date of the accident. For injuries occurring prior to January 1, 1994, this section shall pertain to the acts of the employee described in s. 440.105 or criminal activities occurring subsequent to January 1, 1994.

(b) A judge of compensation claims, administrative law judge, or court of this state shall take judicial notice of a finding of insurance fraud by a court of competent jurisdiction and terminate or otherwise disallow benefits.

(c) Upon the denial of benefits in accordance with this section, a judge of compensation claims shall have the jurisdiction to order any benefits payable to the employee to be paid into the court registry or an escrow account during the pendency of an appeal or until such time as the time in which to file an appeal has expired.

(7)

(e) As a part of rebutting any presumptions under paragraph (b), the injured worker must prove the actual quantitative amounts of the drug or its metabolites as measured on the initial and confirmation post-accident drug tests of the injured worker's urine sample and provide additional evidence regarding the absence of drug influence other than the worker's denial of being under the influence of a drug. No drug test conducted on a urine sample shall be rejected as to its results or the presumption imposed under paragraph (b) on the basis of the urine being bodily fluid tested.

Section 7. Section 440.093, Florida Statutes, is created to read:

440.093 Mental and nervous injuries.—

(1) A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. Nothing in this section shall be construed to allow for the payment of benefits under this chapter for mental or nervous injuries without an accompanying physical

injury requiring medical treatment. A physical injury resulting from mental or nervous injuries unaccompanied by physical trauma requiring medical treatment shall not be compensable under this chapter.

(2) Mental or nervous injuries occurring as a manifestation of an injury compensable under this chapter shall be demonstrated by clear and convincing medical evidence by a licensed psychiatrist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. The compensable physical injury must be and remain the major contributing cause of the mental or nervous condition and the compensable physical injury as determined by reasonable medical certainty must be at least 50 percent responsible for the mental or nervous condition as compared to all other contributing causes combined. Compensation is not payable for the mental, psychological, or emotional injury arising out of depression from being out of work or losing employment opportunities, resulting from a preexisting mental, psychological, or emotional condition or due to pain or other subjective complaints that cannot be substantiated by objective, relevant medical findings.

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

Section 8. Effective January 1, 2004, subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)(a) Every employer coming within the provisions of this chapter, ~~including any brought within the chapter by waiver of exclusion or of exemption,~~ shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16 Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38.

(b) In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

(c) A contractor ~~shall~~ may require a subcontractor to provide evidence of workers' compensation insurance ~~or a copy of his or her certificate of elec-~~

the firefighter, spouse, or dependent children may otherwise be eligible, except that a person who qualifies for benefits under this section shall not be eligible for the health insurance subsidy provided under chapter 121, chapter 175, or chapter 185.

Section 48. The amendments to sections 440.02 and 440.15, Florida Statutes, which are made by this act shall not be construed to affect any determination of disability under section 112.18, section 112.181, or section 112.19, Florida Statutes.

Section 49. If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.

Section 50. Except as otherwise provided herein, this act shall take effect October 1, 2003.

Approved by the Governor July 15, 2003.

Filed in Office Secretary of State July 15, 2003

Tape List
Laws of Florida, 2003-412

Note: The Senate CD's run on special software that provides a tabbed index. Attached is a guide to using these CD's. House floor debate CD's were selectively copied by the House Clerk's office and include hard-copy Journal pages. House committee media is generally indexed on the tape box.

House Select Committee on Workers' Compensation

14 tapes are listed in Florida State Archives (FSA) Series 414, Box 1396 (included with the records of the House Committee on Insurance). Meeting dates contained in the box are listed below with the handwritten staff descriptions included.

2/18/03	Public Hearings (2 tapes)
3/4/03	Claims Process (1 tape - tape 2 is missing)
3/6/03	Benefits & Reimbursements and Fraud (2 tapes)
3/11/03	Fraud and Market Availability issues (2 tapes)
3/13/03	Health Care and Construction Industry issues (2 tapes)
3/18/03	Construction Industry and round table discussion of priority issues. 2 tapes. [<i>note: there is a brief mention of "horizontal immunity" as being a "legal" issue in the meeting file for this meeting date</i>]
3/20/03	Proposed language of final report (2 tapes)

No topical or chronological indexes for these meetings could be located in the meeting files. (Series 19, Box 3374). Meeting packets are still available on the Florida House of Representatives website - **Tapes not copied at this time**

2003 Regular Session

01. House Committee on Insurance, April 3, 2003, re: **Proposed Committee Bill (PCB) IN 03-02**. This bill incorporates most of the recommendations of the Select Committee and was later filed at House Bill (HB) 1837. (in Series 414, Box 1428) 2 tapes copied

CS/HB 1837

02. House Committee on State Administration, April 14, 2003 (In Series 441, box 1393) 1 tape copied.

Tape List

Laws of Florida, 2003-412 (continued)

CS/HB 1837 (continued)

*** Floor Debates ***

- | | | | |
|--------|--------|----------------|---|
| 03-06. | House | April 25, 2003 | (from House Clerk's Office) 4 CD's copied |
| 07 | House | April 28, 2003 | (from House Clerk's Office) 1 CD copied |
| 08. | Senate | May 1, 2003 | (Series 1238, Box 205) 1 CD copied |

CS/CS/SB 1132 (substituted bill)

09. Senate Committee on Banking and Insurance, April 15, 2003 (in Series 625, Box 1072). 1 CD copied
10. Senate Committee on Appropriations, Sub-Committee on General Government Appropriations, April 22, 2003 (in Series 625, Box 1031) 1 CD copied

2003 Special Session A

SB 50-A (passed bill)

11. Senate Committee on Banking and Insurance, May 20, 2003 (in Series 625, Box 1072). 1 CD copied.

*** Floor Debates ***

- | | | | |
|----|--------|--------------|---|
| 12 | Senate | May 21, 2003 | (in series 1238, Box 1072) 1 CD copied |
| 13 | House | May 27, 2003 | (from House Clerk's Office) 1 CD copied |

HB 25-A (similar bill)

14. House Committee on Insurance, May 13, 2003 (labeled as a "workshop" meeting) (In Series 414, Box 1428). 1 tape copied

*** Floor Debates ***

- | | | | |
|--------|-------|--------------|--|
| 15-16. | House | May 15, 2003 | (from House Clerk's Office). 2 CD's copied |
| 17-19 | House | May 27, 2003 | (From House Clerk's Office). 3 CD's copied |

State Admin 4/14/03

**HB 1837 – Workers' Compensation
SUMMARY OF STRIKE-ALL AMENDMENT**

ISSUE	DESCRIPTION
Exemptions	Same as HB 1837; revises exemption provisions to limit construction exemptions to 3 corporate officers owning at least 10% of the corporation, effective 1/01/04, repeals commercial limitation from SB 108 (2002) effective upon the bill becoming a law
Average Weekly Wage	Same as original PCB, clarifies definition to 13 weeks prior to the date of the accident, provides average will be used if employee worked 75% of the 13 week period (presently 90%)
Redefines "Accident"	Restricts toxic exposure cases, requires clear and convincing evidence establishing exposure to the substance at levels which can cause the injury sustained
Cumulative Injuries	Requires clear and convincing evidence in occupational disease and repetitive injury cases.
Compensability of Mental or Nervous Injuries	Must have presence of physical injury needing medical treatment which is the major contributing cause of the mental or nervous injury, requires clear and convincing evidence, limit duration to no more than 3 months after maximum medical improvement
Permanent Total Disability Standard	Same as HB 1837, redefines "catastrophic injury" to eliminate social security standard and provide for limited inclusion, replaces with provision which allows for permanent total disability where the employee is unable to work due to the injury
PTD Duration	Same as HB 1837, ends PTD indemnity benefits (not medical) at age 70 or five years after injury, whichever is later.
PTD Supplemental Benefits	Same as HB 1837, end at age 62
Impairment Indemnity Benefits	Increases impairment benefit by 50%, from 50% of full compensation rate (66.66% of average weekly wage – "AWW") to 75% of full compensation rate, reduces impairment benefit by 50% if employee is subsequently employed and earning above AWW, eliminates supplemental benefits for permanent partial disability
Horizontal Immunity	Similar to HB 1837, provides employer immunity for all employers on a jobsite, except where another employer's gross negligence is the primary cause of the workplace accident.
Intentional Tort	Same as HB 1837, provides that employer is immune from civil liability except in cases where the employer intentionally causes the injury
Practice Parameters	Similar to HB 1837, adopts national standard for parameters and protocols, requires use of practice parameters throughout chapter
Major Contributing Cause	Same as HB 1837, work related accident must be more than 50 percent responsible for the original injury and for subsequent injury, require objective relevant medical findings for injuries that are not readily observable
Other Medical	Restricts experimental, investigative, or research medical services
Pharmacy	Provides for carrier's ability to contract for prescription and pharmacist services, provides for pharmacist dispensing fee at wholesale, plus \$2 00
Medical Reimbursement	Provides that certain physicians will have reimbursement fees increased up to 125% of Medicare fees – primary care doctors, neurosurgeons and orthopedists, provides that the increase will be cost neutral and will be taken from decreases in hospital reimbursements for radiology and clinical lab services, and occupational, physical, and speech therapy

ISSUE	DESCRIPTION
Attendant Care	Not paid until receipt of written request from doctor; limits family member reimbursement to no more than per-hour value in the community
Independent Medical Exams	Limits to one IME for the employee and one for the carrier, requires carrier to pay for only one, limit to one at hearing.
Alternative dispute Resolution	Allows for voluntary binding arbitration at the consent of both parties
Notice of Availability of Assistance	Requires employer to provide worker with notice of availability of services from Employee Assistance Office and Ombudsman upon receipt of a claim
Attorney fees	Sets fixed rate for prevailing claimant attorney reimbursement, removes ability of JCC to increase, limits award to amount over last offer of settlement, eliminates hourly fees, reduces scheduled percent of contingency fees to 18-13-8-5 (instead of 20-15-10-5), non-prevailing party pays costs
Appeals Panel	Current law - no changes to appeals process.
JCCs, Rulemaking	Current law - no changes to OJCC or to JCC rulemaking
Procedural Requirements	Similar to HB 1837, revises provisions relating to mediation and procedures before the JCC, allows for workable timelines
Enforcement/Fraud	Similar to HB 1837, provides greater enforcement authority to the department, increases penalties, provides for additional provisions relating to carrier compliance requires builder to certify compliance when pulling a building permit
Joint Underwriting Association (JUA)	Similar to HB 1837, provides for subplan for small employers at 125% of voluntary market, creates subplan for non-profit 501c(3) corporations at 110% of voluntary market, provides that only policyholders can be assessed by JUA
Workplace Safety	Same as HB 1837, requires the Division of Workers' Compensation to publicize free safety consultation programs, encourages carriers to do the same, authorizes safety premium credits for private and public employers, requires JUA policyholders to participate in safety programs
Drug-Free Workplace	Same as HB 1837 shifts burden to employee once illegal drugs are found in the worker's system
Out-of-State Employers	Similar to HB 1837, requires all employers to have Florida coverage or a Florida endorsement, requires full disclosure of Florida payroll to insurance company, provides criminal penalty
Safety Consultants	Same as HB 1837 expands immunity from third-party civil liability for safety consultants to all employees on a jobsite
Death Benefits	Similar to HB 1837, increases funeral benefit from \$5,000 to \$7,500, and death benefit from \$100,000 to \$150,000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1837 (PCB IN 03-02) Workers' Compensation
SPONSOR(S): Committee on Insurance and Berfield
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Insurance, 19 Y, 0 N, Thomas, Schulte. Row 2: 2) State Administration, 4 Y, 0 N, Thomas, Everhart. Rows 3-5 are empty.

SUMMARY ANALYSIS

On January 16, 2003, Speaker Byrd appointed the Select Committee on Workers' Compensation to identify measures to improve the availability and affordability of workers' compensation in Florida. On March 24, 2003, the Select Committee issued its findings and recommendations. The proposed committee bill, as originally drafted, implemented these recommendations. The PCB was heard on April 9, 2003, amended, and unanimously passed.

HB 1837 (PCB IN 03-02) by the Committee on Insurance and Rep Berfield was heard in the Committee on Administration on April 14, 2003, amended, and unanimously passed.

The bill, as amended, implements specific recommendations relating to dispute resolution, attorneys' fees, employer immunity from liability, medical issues, reimbursement fee schedules, compensability, independent medical exams, indemnity and disability benefits, the joint underwriting plan, fraud and enforcement, exemptions, workplace safety, safety consultants, managed care arrangements, death benefits, drug-free workplace provisions, and procedures before the judges of compensation claims.

The bill does not have a direct fiscal impact on state or local governments.

19 3417

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL

- | | | | |
|-------------------------------------|------------------------------|-----------------------------|---|
| 1 Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2 Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3 Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4 Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain.

B. EFFECT OF PROPOSED CHANGES

On January 16, 2003, Speaker Byrd appointed the Select Committee on Workers' Compensation to identify measures to improve the availability and affordability of workers' compensation in Florida. The Select Committee was specifically charged to address the following four issues:

- Measures to improve availability and affordability of workers' compensation insurance,
- Measures to reduce fraud,
- Measures to assure that benefits for injured workers are adequate and equitable, and
- Measures to streamline the administration of the system

The Select Committee met seven times and received valuable input from all stakeholders. The Select Committee took many hours of testimony from nearly 50 speakers and received numerous written presentations. At its final meeting, on March 20, 2003, the Select Committee achieved a consensus on recommendations for solutions that may be enacted this Legislative Session. On March 24, 2003, the Select Committee released its findings and recommendations. The proposed committee bill, as originally drafted, implemented these recommendations.

CONDITIONS OF THE MARKET IN FLORIDA

The Select Committee found that employers are increasingly frustrated with both the affordability and availability of workers' compensation insurance. Testimony by the Workers' Compensation Research Institute (WCRI) provided objective statistical research and information that tells much of the story in Florida. WCRI's key findings regarding Florida are

- Florida has the lowest non-hospital medical provider reimbursement fee schedule among 40 reviewed states, being one of only two states that reimburse non-hospital medical providers less than what Medicare pays
- Florida's hospital reimbursements are higher than most states
- Permanent disability or impairment benefits are paid in 44 percent of cases
- Statutory benefit formulas are lower than most other states, but actual impairment benefits paid are higher than average

WCRI further reported that when the employer/carrier controls an employee's change of health care provider, medical costs were reduced by 7 to 10 percent. It was also shown that in Florida chiropractic cases are less costly than physician-directed physical therapy for back strains to get the same duration of disability, but this was not the case in states that did not limit the use of chiropractic care as in Florida.

Enterprise Florida reports that out of 45 comparison states, Florida ranks 44th (ahead of only California) in workers' compensation premium costs, and by far exceeds any other state in the Southeast. These costs are built into total labor costs which is the number two factor (behind availability of skilled labor) businesses give as location factors for their business. It is clear that these costs are hurting Florida's ability to attract businesses, thereby, limiting economic growth.

COST DRIVERS

The National Council on Compensation Insurance (NCCI) testified before the Select Committee regarding factors that were seen as cost drivers to the workers' compensation system in Florida. The three major costs drivers identified by NCCI are:

- The high frequency of permanent total disability (PTD) claims—five times higher than the national average,
- The high medical costs for permanent partial disability (PPD) claims—nearly two times higher than the national average; and
- The high medical costs for temporary total disability (TTD) claims—80 percent higher than the national average.

NCCI also identified other significant Florida cost drivers:

- Hospital costs are relatively high, which is a significant contributor to Florida's high medical costs.
- While Florida's physician reimbursement fee schedule is low, there may be high utilization of physician services or an expensive mix of services being provided.
- Florida does not have unusual types of injuries that would explain higher costs.
- Attorney involvement is significant in Florida and helps explain the major cost drivers. When attorneys are not involved, the difference in claim costs between Florida and the national average is minimal. When attorneys are involved, Florida's claim size is nearly 40 percent higher than the national average.
- Medical costs constitute the majority of total losses in Florida (63.6%), which is not the case nationwide (47.1%).

DISCUSSION

The purpose of the workers' compensation law is to ensure the prompt delivery of benefits to the injured worker and to facilitate the employee's return to gainful employment at reasonable cost to the employer. Further, the Legislative intent is that the system be self-executing and that the system not be an administrative or economic burden to the participants.

DISPUTE RESOLUTION

The Office of the Judges of Compensation Claims (OJCC) reported that 115,367 petitions were filed with their office during the fiscal year 2001 – 2002, an 18.76 percent increase from the prior year. This follows a long-term trend in petition filings, which has seen a 60 percent total increase since 1998, an increase that cannot be explained by a similar growth in job creation (and no increase in the number of judges hearing these cases). A vast majority of the petitions for benefits are settled between the parties. Testimony from the OJCC reported that about half of the petitions last year were pursued to the mandatory mediation phase and that about half of those were resolved in mediation.

The OJCC has 31 judges hearing the petitions and 31 mediators. In the last complete fiscal year, the judges entered about 40,000 orders approving complete settlements, another 26,500 orders resolving the disputed parts of ongoing cases, and about 2,400 final decisions on the merits of the case. This rise in demand on the judges and the mediators means longer waits for case resolution. Last year, the

Legislature authorized the use of private mediators, which helps with the availability of mediators, but costs four times as much to the system. Use of OJCC mediators is free, but is paid from assessments on the carriers at a cost of about \$100 per mediation. Private mediators cost the carrier about \$500 per mediation. Last year, the Legislature extended the time period for required mediation to 90 days, but the calendars of the many state mediators are booked 6 months in advance.

The OJCC reports that attorneys' fees for defending claims totaled about \$112 million for the last three quarters of the fiscal year, and reported claimants' fees amounted to approximately \$223 million. The operating budget of the OJCC was about \$15 million for the year. These stated costs of litigation, which do not include all costs, represents about \$350 million, or about \$3,000 per petition, however, many petitions may be related to a single case.

The Select Committee recommended:

- **Require each petition for benefits with the Office of Judges of Compensation Claims to include all issues that are ripe, due, and owing at the time the petition is filed.**

The bill adds subsection (9) to section 440.192, F.S., relating to petitions before the OJCC to implement the above recommendation. The bill also amends s. 440.25, F.S., to revise procedures for mediation and petitions for benefits. The revisions allow more time in the beginning of the petition process, without extending the total time to resolve petitions, to provide for greater opportunity to resolve cases in the mediation stage. The bill creates s. 440.1926, F.S., to provide for alternative dispute resolution through voluntary binding arbitration.

LEGAL REFORM

ATTORNEYS' FEES – The Select Committee heard testimony that hourly attorneys' fees in workers' compensation litigation are a significant cost driver and should be prohibited. The testimony supported the view that claims disputes are often unnecessarily extended and continued in order to increase the amount of attorneys' fees awarded, and that elimination of the hourly fee provision would encourage the furtherance of meritorious cases to the exclusion of those lacking justification.

INDEPENDENT APPEALS COMMISSION - Testimony was made calling for the creation of another level of appeal for orders of the OJCC. Currently, all appeals are heard by the First District Court of Appeal. Those supporting an independent workers' compensation panel believe an appellate commission staffed with experts in workers' compensation issues, who apply the intent of the system, would reinforce the appropriate "front-end" behavior of the system participants. These supporters further suggested that appeals from the independent panel go to the regional District Courts of Appeals and the Florida Supreme Court.

EMPLOYER IMMUNITY - Another issue that came before the Select Committee is that of employer immunity. Workers' Compensation laws were originally adopted as a tradeoff between employers and employees. The injured employee receives medical care and a portion of any lost income, but gives up the right to sue the employer in tort and the right to recover damages for pain and suffering. However, several areas exist whereby civil lawsuits relating to the workplace injury may occur. Two of these areas that provide for an employer to be sued are horizontal lawsuits and intentional injuries.

Horizontal lawsuits occur, for example, where several subcontractors are working for one general contractor and one of the subcontractor's employees suffers a workplace injury. Assuming the injury was not intentionally caused by the general contractor and the general contractor has workers' compensation coverage, the general contractor enjoys immunity for the injury, and workers' compensation benefits are provided to the injured worker. However, the other subcontractors may be sued under the theory of negligence. Testimony before the Select Committee recommended that these horizontal lawsuits be prohibited.

Employers may lose their immunity from civil liability for the injury if it is shown that actions by the employer were designed to intentionally cause the employee's injury or death. Case law has expanded this opening to allow civil lawsuits for cases of culpable liability where it can be shown the employer's conduct or inaction was substantially certain to result in the employee's injury or death.

The Select Committee recommended:

- **Restore horizontal immunity for all employers on a job site.**
- **Prohibit the award of hourly attorneys' fees in most cases, but ensure some incentive for attorneys to take small dollar claims.**
- **Provide that appeals from the Judges of Compensation Claims go first to an independent workers' compensation appeals commission and provide that appeals from the commission go to the respective District Courts of Appeals.**
- **Limit the allowance of civil suits against an employer by an injured worker to cases where it can be shown the employer acted with the intent to cause injury or death.**

The bill amends paragraph 440.10(1)(e), F.S., to restore horizontal immunity for all employers on a jobsite, except when the subcontractor is grossly negligent.

The bill amends subsection 440.34(2), F.S., to revise provisions relating to attorneys' fees. The bill sets a fixed rate for prevailing claimant attorney reimbursement, removes ability of a judge for compensation claims (JCC) to increase award; limits award to amount over last offer of settlement, eliminates hourly fees, reduces scheduled percentage amounts of contingency fees, and provides that nonprevailing party pays costs for the other party.

The bill amends subsection 440.11(1), F.S., to revise provisions relating to an employer's immunity from liability to implement the above recommendation on intentional actions by the employer.

The bill amends s. 440.11(3), F.S., to expand the immunity from third-party tortfeasor liability for safety consultants to apply to all employees on a jobsite.

MEDICAL

A good portion of the testimony before the Select Committee was made by medical providers and their representatives. One of the Select Committee's meetings was devoted entirely to presentations by medical providers. A strong theme of the testimony was that medical decisions should be left to medical professionals. Other testimony suggested the Legislature address the establishment of practice parameters. Discussion surrounded the issue of workplace injuries that can be the major contributing cause to additional injuries.

The Select Committee recommended:

- **Require the appropriate agency, after consultation with the Department of Financial Services (DFS), health professional associations, and health-related organizations, to adopt by rule scientifically sound practice parameters for medical procedures relevant to claimants; include pain management and psychiatry in the practice parameters.**

- **Provide that in order for an original work-related injury to be a major contributing cause of a subsequent injury, the original work-related injury must be more than 50 percent responsible for the subsequent injury and subsequent disability.**

The bill amends subsection (15) of section 440 13, F S., to adopt national standard for workers' compensation medical practice parameters and protocols, requires use of practice parameters throughout chapter 440, F S .

The bill amends subsection 440 09(1), F S . to implement the above recommendation relating to major contributing cause of a subsequent injury, to provide that injuries sustained due to occupational disease or repetitive exposure must be demonstrated by clear and convincing evidence, and to provide that pain or subjective complaints alone, in the absence of objective relevant medical findings, are not compensable

The bill amends various sections of chapter 440, F S , relating to compensability of injuries Section 440 093, F S , is created to address mental and nervous injuries by requiring the presence of a physical injury needing medical treatment which is the major contributing cause of the mental or nervous injury, requiring clear and convincing evidence showing the injury, and limiting the duration of benefits for mental or nervous injuries to no more than 3 months after maximum medical improvement

Section 440 02(1), F S , is amended to provide that injuries caused by exposure to a toxic substance requires clear and convincing evidence establishing exposure to the substance at levels which can cause the injury sustained

MEDICAL REIMBURSEMENT

The Select Committee heard a substantial amount of testimony regarding the present workers' compensation fee reimbursement provisions for medical providers WCRF reported that Florida's reimbursement fees for non-hospital medical providers are among the very lowest nationwide (17% below Medicare) and that reimbursement fees for hospital medical providers are one of the very highest nationwide

Testimony suggested the current reimbursement levels encourage behavior that may include over-utilization of some medical services Other resulting manipulative behavior may be malingering injuries to prolong benefits, obstruction of return-to-work processes, delays in authorizing benefits, and increased and longer litigation It was reported that low reimbursement fees keep many medical providers out of the system, limiting access and quality of medical care Many speakers called for non-hospital medical provider fees to be set at some multiple of Medicare

The Select Committee recommended:

- **Provide for reimbursement of non-hospital medical services at an amount that is at least 125 percent of the Medicare reimbursement schedule.**
- **Require the three-member panel to rewrite the current reimbursement schedule for hospital per-diem charges. The revised schedule may take into account a distinction between a surgical and a non-surgical stay, as well as the distinction between acute and trauma care, but must reduce the existing per-diem schedule by at least 15 percent. Require the three-member panel to rewrite the health care provider fee-for-service reimbursement schedule. Require revised schedules to be cost-neutral to employers and carriers relative to existing fees and schedules.**
- **Allow the health care provider and the employer or its carrier to contract for fees other than the adopted reimbursement schedules.**

The bill amends subsection 440.13(12), F.S., to revise provisions relating to medical fee reimbursement schedules. The bill provides for revisions to current medical reimbursement fee schedules to reach reimbursement at 125 percent of the Medicare reimbursement fee schedule for primary care physicians, neurosurgeons, and orthopedists certain services, and a reduction in hospital non-surgical services for clinical laboratories, radiology, physical therapy, speech therapy, and occupational therapy. The revised schedule must be cost neutral compared to existing total medical reimbursement. The bill provides that pharmacist dispensing fees shall be set at the wholesale cost, plus \$2.00.

INDEMNITY BENEFITS

Indemnity benefits are those benefits paid to injured workers in lieu of lost wages as a result of not being able to work due to a workplace injury. Discussion surrounded the current impairment rating and whether it needed to be revised. Another issue of discussion was problems with determining an employee's average weekly wage for purposes of setting entitled statutory benefits. It was suggested a significant amount of litigation surrounds this issue and it could be avoided with some definitional clarification.

The Select Committee recommended:

- **Increase impairment benefits to the full compensation rate.**
- **Provide clarity and certainty to the definition of "average weekly wage."**

The bill amends subsection 440.14(1), F.S., to redefine "average weekly wage" and to provide that the average will be used if the injured employee worked 75% of the 13 week period (presently 90%).

The bill amends subsection 440.15(3), F.S., to increase impairment income benefits to 75% of the full compensation rate (66.66% of average weekly wage). This is a 50% increase from the current benefit of 50% of the full compensation rate. The bill amends s. 440.15(3) to eliminate the payment of any supplemental permanent impairment benefits.

PERMANENT PARTIAL AND PERMANENT TOTAL DISABILITY CLAIMS

The Select Committee heard testimony that Florida's benefits for permanent partial disability (PPD) and permanent total disability (PTD) claims are low. However, as reported by the WCRI, Florida has five times as many PTD claims compared to the national average. Due to the higher frequency of claims, Florida's total cost for PTD claims is almost three times higher than the national average, and the cost of PPD claims is twice as high. Testimony suggested the Legislature tighten the standard to receive PTD benefits, address impairment ratings; eliminate the provision that ties a claimant's PTD eligibility status to federal Social Security benefits, and end payment of PTD supplemental benefits at an age certain, unless a claimant becomes injured after that age, after which the claimant would receive supplemental payments for 5 years.

As part of the last major reform of workers' compensation laws almost 10 years ago, the Legislature provided that an employee is eligible for PTD benefits if the injury qualifies the employee for disability or supplemental benefits under the Social Security Act. The Select Committee heard testimony that this provision is a substantial contributor to the large numbers of costs and frequency of PTD benefits in Florida and that this provision was not intended to be used in this way. While the statute provides for PTD benefits for specifically defined catastrophic injuries, the use of the Social Security standard has allowed for PTD lifetime benefits in many more instances.

The Select Committee recommended:

- **Eliminate the provision that ties a claimant's PTD eligibility to the federal Social Security disability income standard.**
- **End PTD indemnity benefits at age 70, but allow at least 5 years of benefits from the date of injury for those workers injured after the age of 65.**
- **End supplemental benefits at the age of 62.**

The bill amends subsection 440.02(38), F S , relating to the definition of "catastrophic injury" to remove reference to the federal Social Security disability income standard and to limit the type of injuries which are automatically included

The bill amends subsection 440 15, F S , to implement the above recommendations on the termination dates for PTD benefits and supplemental benefits and to create a new standard for permanent total disability claims for injured workers who are unable to find any type of employment within a 50 mile radius of the employee's residence

JOINT UNDERWRITING ASSOCIATION (JUA)

In 1993 the Legislature provided for a joint underwriting plan for workers' compensation insurance. The purpose of the plan was to provide policies to employers who are entitled to coverage, but are able to purchase a policy through the voluntary market. Because of the poor market conditions of the voluntary market, more and more employers are being forced to go to the plan to obtain coverage. The cost of policies under the plan is significantly higher through the voluntary market. The high rates are intended to assure that Joint Underwriting Association (JUA) is a market of last resort and to minimize the possibility that JUA under pricing will result in surcharges on non-JUA workers' compensation premiums

While it is hoped reform efforts will increase the availability of policies through the voluntary market, the Select Committee heard testimony suggesting the Legislature make some changes to the existing joint underwriting plan to help smaller employers with their premium costs through the plan. Acknowledging that reform efforts may take a while to have a substantial impact on the voluntary market, it was suggested the Legislature provide for subplans for smaller employers

The Select Committee recommended:

- **Authorize the JUA to create additional subplans for small employers, with rates that do not exceed 125 percent of the voluntary market rates but are still high enough to prevent the JUA from competing with the voluntary market.**
- **Prohibit the JUA from levying assessments on any person or entity other than a JUA policyholder.**

The bill amends subsection 631 311(4), F S , to revise provisions relating to the joint underwriting plan to implement the above recommendations. The bill also creates a subplan for non-profit charitable corporations at 110% of voluntary market rates

FRAUD, COMPLIANCE, AND ENFORCEMENT

Testimony before the Select Committee indicated that fraud is on the top of everyone's list as a serious contributor to costs, as well as to the high level of frustration. Testimony further indicated that concerns are divided between employee fraud, employer fraud, and carrier compliance. Description of employee

fraud involved incidents of clear-cut, deceitful conduct. Employer fraud is more insidious and contributes more to costs through lost available premium dollars for the system. Employer fraud was presented as involving premium avoidance by under-reporting the employer's payroll, misrepresenting employee classifications, inappropriately claiming exemptions, or failing to acquire coverage at all. Another example of employer fraud was employers from other states working in Florida, but not reporting their payroll as Florida payroll and, therefore, benefiting by lower premiums and unfairly competing with Florida businesses that legitimately report their payroll.

All provable fraud rises to the level of a criminal violation, but evidentiary standards make these cases difficult. Testimony revealed areas where the penalties and enforcement resources were limited, especially for prosecutors. DFS handles its criminal investigations through the Bureau of Workers' Compensation Fraud within the Division of Insurance Fraud. Administrative compliance issues are handled by the Bureau of Compliance within the Division of Workers' Compensation in DFS.

Another consensus among the presentations and public testimony called for tough enforcement of workers' compensation regulatory laws. While there is a uniform call for stronger sanctions and tighter standards, there is also a recognition that much of the present detrimental behavior is already unlawful and that more laws, without effective enforcement, will not solve many problems.

During the 2002 Legislative Session, compliance and enforcement responsibilities, which are housed within the Division of Workers' Compensation, were transferred from the Department of Labor and Employment Security to the Department of Insurance and are now in the DFS. The Division's authority to issue stop-work orders is limited to an employer's failure to secure coverage or misrepresentation of payroll. The Bureau of Workers' Compensation Fraud within DFS' Division of Insurance Fraud enforces criminal violations of compliance laws.

The Select Committee recommended:

- **Provide authority to impose administrative sanctions on employers that materially misclassify employees or underreport payroll.**
- **Provide that stop-work orders or unpaid penalties against a corporation are applicable to another corporation formed with the same principals and engaged in the same enterprise or a related enterprise.**
- **Require out-of-state employers who have employees performing work in Florida to have a Florida policy or endorsement using Florida rates and rules.**
- **Provide an administrative penalty for an employer who conducts any business operations following the service of a stop-work order.**
- **Provide administrative penalties for an employer who fails to maintain required business records or fails to produce records upon request.**
- **Increase criminal penalties for workers' compensation fraud by one degree of severity.**
- **Require the DFS to provide the Legislature with a listing of any provisions of chapter 440, Florida Statutes, relating to carrier compliance and enforcement, or any administrative rule relating to carrier compliance and enforcement, that the department feels it is unable to enforce. Require the department to include in that list any other impediment to enforcement resulting from the recent reorganization of the department and the transfer of activities from the former Department of Labor and Employment Security.**

The bill amends sections 440 10.(out-of-state employers), 440 105 (penalties), 440 1051 (penalties), 440 107 (department powers and penalties), 440 38 (out-of-state employers), 440 381 (fraudulent applications), and 440 525, F S (penalties), to revise provisions relating to fraud, compliance, and enforcement to implement the above recommendations. The bill amends s 440.20, F S , to provide for tougher penalties and enforcement relating to carrier compliance.

EXEMPTIONS

Florida law provides many exemptions and exceptions from the mandatory provisions of the workers' compensation system. Exemptions require the exempt employer to elect the exemption and opt out of the mandatory coverage. Exceptions require no action by the excepted employer. The law separates exemptions for non-construction industries from those for the construction industry. For non-construction industries, coverage is required for all public employers and all private employers with four or more employees, with some specific exceptions and exemptions. For the construction industry, employers with one or more employees must obtain coverage, with some specific exceptions for sole proprietors, partners, and corporate officers.

Coverage of the construction industry has been treated differently because of the nature of the hazardous work performed on construction job sites. With greater risk come higher premiums and more pressure to avoid obtaining coverage. The Select Committee heard a great deal of testimony regarding fraud and how exemptions play a large role in certain types of premium fraud. Employers are said to exploit these exemptions to classify actual workers as owners, partners, and corporate officers, thus avoiding the payment of premiums. With so many premium dollars lost, remaining employers who obtain the required coverage pay much higher premiums.

The Select Committee recommended:

- **Limit the construction industry exemption to no more than three corporate officers, and require each exempt officer to own at least 10 percent of the corporation.**
- **Repeal the \$250,000 commercial exemption limitation created by SB 108 (chapter 2002-236, Laws of Florida).**

The bill amends sections 440 02, 440 05, 440 077, 440 10, F S , to revise provisions relating to definitions and exemptions to implement the above recommendations. The bill repeals the commercial exemption limitation upon the bill becoming law and implements the new exemption provisions on January 1, 2004. The bill exempts developmentally disabled Medicaid clients under Adult Day Training Services and their employers from the mandatory provisions of workers' compensation.

WORKPLACE SAFETY

It is estimated that approximately 290,000 workplace injuries occur each year in Florida. Florida law requires carriers and employers to report each case that results in lost time to the Division of Workers' Compensation. Over the past 10 years, the lost-time injuries have consistently stayed at about 80,000 reports annually. Of the reported lost-time injuries, over 62 percent of all reported injuries are a result of sprains and strains (44.2%), contusions (11.2%) and fractures (7.3%).

The University of South Florida SafetyFlorida Consultation Program is administered by the USF College of Public Health and receives \$1.8 million from OSHA and \$180,000 from the state. The program works with employers in the private sector to ensure compliance with OSHA laws and to improve workplace safety. The program operates in cooperation with the Florida Partnership for Safety and Health, which works on workplace safety with public employers.

The Select Committee recommended:

- **Require the Division of Workers' Compensation to publicize on its Internet site, and encourage carriers to publicize the availability of free safety consultation services and safety program resources.**
- **Provide that both public and private employers may be eligible for safety program premium credits.**
- **Mandate that employers participating in the JUA participate in a safety training or evaluation program.**

The bill amends section 440 1025, F S , and subparagraph 631 311(4)(c)11 , F S , to revise provisions relating to workplace safety programs and the joint underwriting plan to implement the above recommendations.

OTHER ISSUES

The bill addresses other issues that were not part of the Select Committee's report. These issues are as follows:

DRUG-FREE WORKPLACE. The bill creates s. 440 09(9), F S , to revise requirements regarding drug testing, requires employee, as part of his or her burden in rebutting the presumption of a positive drug test, to show more than just the employee's denial of being under the influence.

MANAGED CARE. The bill amends s. 440 134, F S , to revise provisions relating to managed care arrangements to include chiropractors and podiatrists as medical care coordinators.

DEATH BENEFITS. The bill amends s. 440 16, F S , to increase funeral expense benefits to \$7,500 (from \$5,000) and death benefits to \$150,000 (from \$100,000).

C. SECTION DIRECTORY

Section 1. Amends s. 440 02, F S , relating to definitions.

Section 2. Amends s. 440 02, F S , relating to definitions, effective January 1, 2004.

Section 3. Amends s. 440 05, F S , relating to exemptions, effective January 1, 2004.

Section 4. Amends s. 440 06, F.S , relating to failure to secure compensation.

Section 5. Amends s. 440 077, F S., relating to exemptions for corporate officers, effective January 1, 2004.

Section 6. Amends s. 440 09, F S , relating to subsequent injuries.

Section 7. Creates s. 440 093, F S , relating to mental and nervous injuries.

Section 8. Amends s. 440 10, F S , relating to employer liability for securing compensation benefits, effective January 1, 2004.

Section 9. Amends s. 440 1025, F S . relating to work safety programs.

Section 10. Amends s. 440.103, F S . relating to building permits.

- Section 11. Amends s. 440 105, F S., relating to penalties
- Section 12. Amends s 440 1051, F S , relating to penalties
- Section 13. Amends s 440 107, F S , relating to powers of the Department of Financial Services
- Section 14. Amends s 440 11, F S., relating to employer liability
- Section 15. Amends s 440 13, F S., relating to practice parameters and medical reimbursement
- Section 16. Amends s 440 134, F S , relating to managed care arrangements
- Section 17. Amends s 440 14, F S , relating to the calculation of average weekly wage
- Section 18. Amends s. 440 15, F.S , relating to benefits
- Section 19. Amends s 440 151, F S , relating to occupational diseases
- Section 20. Amends s 440 16, F S , relating to death benefits
- Section 21. Amends s 440 185, F S , relating to notice of injury
- Section 22. Amends s 440 192, F S , relating to petitions for benefits
- Section 23. Creates s 440 1926, F S , relating to alternative dispute resolution
- Section 24. Amends s 440 20, F S . relating to time for payment of compensation
- Section 25. Amends s. 440 25, F S , relating to procedures for mediation and hearings
- Section 26. Amends s. 440 34, F.S . relating to attorneys' fees
- Section 27. Amends s. 440 38, F.S , to provide a requirement regarding coverage from outside the state
- Section 28. Amends s 440 381, F.S , to provide a criminal penalty for unlawful applications
- Section 29. Amends s 440 42, F S , relating to insurance policies
- Section 30. Amends s 440 49, F S , relating to the Special Disability Trust Fund, correcting a cross-reference
- Section 31. Amends s 440.491, F S , relating to reemployment of injured workers; correcting a cross-reference
- Section 32. Amends s 440 525, F S , relating to examination of carriers
- Section 33. Amends s 627 162, F S , relating to payment of delinquency and collection fees
- Section 34. Amends s 627 311, F S , to provide an additional subplan under the joint underwriting plan
- Section 35. Amends s 921 0022, F S , to revise offense severity chart to reflect changes in penalties made under the bill

Section 36 Requires a report from the Department of Financial Services

Section 37 Amends s. 946 523, relating to prison industry enhancement programs, correcting a cross-reference

Section 38 Amends s. 985 315, relating to vocational work-related programs, correcting a cross-reference

Section 39 Repeals s. 440 1925, F.S., relating to resolution of disputes

Section 40 Provides an effective date of October 1, 2003, except as otherwise provided in the bill

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE GOVERNMENT

1. Revenues.

None

2 Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS

1 Revenues.

The bill has no direct impact on local government revenues

2 Expenditures

The bill has no direct fiscal impact on local governments

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The bill is designed to have a positive economic impact on the private sector, however, its impact is unknown at this time. Many of the provisions help reduce costs, including eliminating and tightening exemptions, increasing penalties and enforcement, limiting attorney fees, streamlining procedures before the judges of compensation claims, limiting eligibility for permanent total disability benefits, limiting the duration of permanent total disability benefits, addressing the definition of average weekly wage and major contributing cause of subsequent injuries, tightening eligibility for compensable injuries, expanding employer and safety consultant immunity from liability, providing greater focus on workplace safety, and placing the burden on injured employees who test positive for illegal drugs to show the amount was insignificant. The bill should help availability of workers' compensation through the creation of a subplan under the joint underwriting association for small employers and non-profit charitable organizations.

D FISCAL COMMENTS

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES.

1 Applicability of Municipality/County Mandates Provision

This bill does not require cities or counties to spend funds or take an action requiring the expenditure of funds

2 Other

None

B. RULE-MAKING AUTHORITY

None

C. DRAFTING ISSUES OR OTHER COMMENTS

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The committee substitute incorporates a strike-all amendment that was adopted by the Committee on State Administration. The amendment makes no changes to the provisions in the bill as filed on exemptions, permanent total disability benefits, liability for intentional torts, the definition of major contributing cause, workplace safety, safety consultant liability, drug-free workplace

The amendment made minor changes to the determination of average weekly wage, horizontal immunity, the joint underwriting association, and compliance for out-of-state employers

The amendment revised provisions in the bill relating to medical reimbursement to reflect a cost-neutral approach between hospitals and physicians, to adopt national practice parameters instead of by rule, to increase death benefits by 50 percent rather than by 100%, and to procedures before the judges of compensation claims

The amendment removed provisions in the bill creating an independent appeals commission

The amendment removed provisions in the bill revising the administrative structure and rulemaking for the judges of compensation claims

The amendment revised provisions in the bill relating to attorneys fees, compensability, independent medical exams, and takes a tougher stance on enforcement, penalties, and carrier compliance

The amendment created a section on alternative dispute resolution which allows for voluntary binding arbitration