

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: CS/CS/SB 1286

INTRODUCER: Budget Committee, Banking and Insurance Committee, and Senator Bennett

SUBJECT: State Reciprocity in Workers' Compensation Claims

DATE: April 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	FavCS
2.	Frederick	Meyer, C.	BC	Fav/CS
3.	Frederick	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates a process designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, provided that state has a reciprocal provision similar to Florida's. The provisions of section 440.094, Florida Statutes, apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

This bill creates section 440.094, Florida Statutes.

II. Present Situation:

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. Workers' compensation insurance was established to address cost of lawsuits filed by employees against employers for work-related injuries. Through the Florida workers' compensation law, employers must provide medical

benefits and indemnity (wage replacement) benefits to their employees who are injured in the course of their employment.

Florida Workers' Compensation Law

In Florida, the worker's compensation process is governed by ch. 440, F.S., titled the "Workers' Compensation Law." Section 440.015, F.S., expresses the legislative intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Further, the Legislature expressed the intent that:

It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department (Department of Financial Services), agency (Agency for Health Care Administration), the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.¹

Chapter 440, F.S., provides a detailed framework for coverage and benefit issues,² as well as the process for resolving disputes,³ all of which are specific to Florida and may have substantially different provisions than in other states.

The Florida laws provide predictability for employees, employers, and workers' compensation insurance carriers. A greater degree of predictability helps the National Council of Compensation Insurance (NCCI), the rating organization that files annual worker's compensation rates in Florida, to more accurately evaluate the risks being covered and to seek the appropriate premium levels. Further, a greater degree of predictability helps the Office of Insurance Regulation (OIR) to evaluate the annual rate filing and establish the most appropriate premium levels for Florida businesses.

Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers' compensation laws of other states, particularly California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

¹ Section 440.015, F.S.

² See, e.g., s. 440.09, F.S. (coverage requirements), s. 440.102, F.S. (drug free workplace provisions), s. 440.106, F.S. (civil remedies), s. 440.15 F.S. (permanent total disability, temporary total disability, permanent impairment benefits, temporary partial disability, and subsequent injury), s. 440.151, F.S. (occupational diseases), and s. 440.16, F.S. (compensation for death).

³ See, e.g., s. 440.021, F.S. (exemption from Administrative Procedure Act), s. 440.011, F.S. (exclusiveness of liability), s. 440.192, F.S. (dispute resolution procedures), s. 440.1926, F.S. (alternate dispute resolution procedures), s. 440.25, F.S. (procedures for mediation and hearings), s. 440.271, F.S. (appeal rights), and s. 440.29, F.S. (procedures before a judge of compensation claims).

Currently, s. 440.09(1)(d), F.S., provides that, if a Florida employee is injured while employed outside of Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the 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 ch. 440, F.S.

III. Effect of Proposed Changes:

The bill creates a process designed to ensure that, if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, if that state has a reciprocal provision similar to Florida's. To accomplish this purpose, the bill creates s. 440.094, F.S., to provide the following.

- If a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- If an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- When an employee has a claim under workers' compensation in another jurisdiction for the same injury or occupational disease as a claim filed in Florida, the total amount of compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation Law.
- An employee is considered to be temporarily working in another state if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.
- The provisions of s. 440.094, F.S., apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

The bill provides an effective date of July 11, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By establishing a process to ensure that a single jurisdiction will apply in cases involving employees injured in a state other than where they are employed, the legislation should reduce the ability of an injured employee to choose the jurisdiction with the more generous benefits. As a result, workers' compensation premiums and potential litigation costs ultimately should be lower for those businesses that employ significant numbers of employees who temporarily travel to other states as part of their employment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget on April 14, 2011

The committee substitute removes from the bill the provisions authorizing a workers' compensation carrier to provide workers' compensation weekly payments through the use of prepaid cards.

CS by Banking and Insurance on March 22, 2011

The Committee Substitute:

- Creates a separate section for the extraterritorial reciprocity provisions, rather than incorporating those provisions in s. 440.09, F.S., as the original bill had.

- Removes a provision that would have authorized the Division of Workers' Compensation of the Department of Financial Services to enter into agreements with similar agencies of other states concerning boundary or jurisdiction disputes.
- Removes redundant language from two subparts of the extraterritorial reciprocity language.
- Provides that, if authorized by the employee, a worker's compensation carrier can make its weekly payment to the employee by means of a prepaid card, if it meets conditions specified in the bill.
- Requires a carrier to keep a record of all payments and the time and manner of the payments, and to furnish the records if requested by the Bureau of Workers' Compensation Fraud.

B. Amendments:

None.