SUMMARY OF 2003 WORKERS' COMPENSATION LEGISLATION (SB 50-A)

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This summary is intended to provide an outline of the provisions passed in Senate Bill 50-A during Special Session A in 2003 of the Florida Legislature. It is an outline of the major workers' compensation bill passed during 2003. This summary is not intended to be a legal treatise, and all persons should consult the actual bill (SB 50-A) and/or consult with your attorney as to the legal meanings of the provisions within the reform legislation

CONSTRUCTION INDUSTRY

1. Effective 1/1/04, defines "construction industry" to mean any business that carries out certain construction activities. Additionally, provides "construction" does not mean a homeowner's act of construction on his own premises, provided that the premises are not intended to be sold, resold, or leased by the owner within one year after the commencement of construction. Current law does not have the one-year "no-sale or resale" provision. Allows the division to establish by rule which classification codes meet the criteria of "construction industry." Section 2. §440.02(8).

2. Effective 1/1/04, allows for the exemption of up to three construction industry officers but only if each of them own at least ten percent of the corporation. "Affiliated" is tightly defined to eliminate the abuse of the same three individuals forming several different corporations to get around the limit of three corporate officers. Current law has no ownership requirement for an exemption. Section 2. §440.02(15)(b)(2).

3. Effective 1/1/04, defines "employee" to include subcontractors in construction. The intent is to eliminate the construction exemptions for entities, including subcontractors, independent contractors, more than three corporate officers/shareholders, partners and sole proprietors and requiring these entities to have coverage. Protects the "Mom and Pops" in the construction industry by allowing incorporation and allowing officers/owners of l0% or more of the corporation to opt out. That is the only exemption allowed. All others in the construction industry would have to have workers compensation coverage. Section 2. §440.02(l5)(b) & (c) 1.

4. Effective 1/1/04, exempts Medicaid-enrolled clients participating in adult day training services are not considered employees. Section 2. §440.02(15)(d)12.

5. Effective 1/1/04, includes employment agencies, employee leasing companies and similar agents who provide employees to other persons in the definition of "employer." Section 2. §440.02(16).

6. Effective 1/1/04, exempts homeowners from definition of "employer." Section 2. §440.02(16)(b).

7. Effective 1/1/04, exempts agents of AHCA providing Adult Day training Services to Medicaid clients from definition of "employer." Section 2. §440.02(16)(c).

8. Effective 1/1/04, tightens up the corporate officer exemption process by requiring that each officer seeking an exemption must be on file with the Secretary of State as a corporate officer at the time the exemption is sought. Requires a separate exemption to be obtained each time the person is employed by a different corporation. Each officer/shareholder must have a stock certificate to evidence their ownership. Section 3. §440.05(3).

9. Effective 1/1/04, eliminates all current statutory provisions that allow partners or sole proprietors to obtain exemptions. Section 3. §440.05

10. Effective 1/1/04, allows corporate officer exemptions only for the individual named and applicable to the scope of the business or trade listed in the exemption. Section 3. §440.05(12).

11. Effective 1/1/04, exemptions are void if at any time after filing for exemption, the named person no longer meets the statutory requirements. Section 3. §440.05(13).

12. Effective 1/1/04, prohibits any officer seeking an exemption to ever receive compensation benefits or to be included in premium calculations. Section 3. §440.05(14) and Section 5. §440.077.

13. Effective 1/1/04, subjects stop work orders and penalty assessments to any affiliated person of a corporate officer who is in violation of a stop work order or penalty assessment. Defines "affiliated persons" to include spouse, any other owner of 10% or more of voting securities of the corporation, any person(s) under common control, any direct or indirect recipient of the persons assets, and any officer, director, trustee, partners, owners, joint venturer or employee performing similar duties or owning such entity in common. Section 3. §440.05(15)

14. Effective 1/1/04, eliminates all amendments to construction exemption created in SB 108. (2002)

15. Effective 1/1/04, requires contractors to require subcontractors to provide evidence of workers' compensation insurance and clarifies that any corporate officer/shareholder who is exempt, must present proof of the exemption to the contractor. Section 8. §440.10(1)(c).

16. Effective 1/1/04, provides horizontal immunity between subcontractors working on the same project or contract work provided the subcontractor has secured workers' compensation coverage and that the subcontractor's own gross negligence was not the major contributing cause of the injury. Section 8. §440.10(1)(e). This change means that in addition to the vertical immunity that a general contractor and his sub contractors have, employees of subcontractors working on the same job site but not for the same subcontractor, will not be able to sue both in tort and in workers compensation for their injuries. The workers compensation system would be the exclusive remedy to the employee of a subcontractor injured by the employee of another subcontractor on the same job site. This had previously been the law in Florida several years ago.

17. Requires proof of workers' compensation coverage or valid exemption for issuance of building permit. Section 10. §440.103.

INDEPENDENT CONTRACTOR NOT IN THE CONSTRUCTION INDUSTRY

18. Changes the criteria for a person to be an independent contractor rather than an employee. They are automatically not an employee if 4 of 6 of the statutory criteria are met. Additionally, the JCC can consider seven additional factors surrounding the case and determine that the individual is not an employee. In all such cases, the claimant bears the burden of proof. s. 440.02(15)(d)1.

DEFINITIONS

19. Defines "accident" to exclude toxic exposure including fungus and mold unless there is clear and convincing evidence that the exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee. The definition is also subject to the provisions of §440.15(5), governing subsequent injury. Section 1. s. 440.02(1).

20. Defines "statement" required on notices, bills, etc., to be the exact fraud statement language in s. 440.105(7). Section 1. §440.02(40)

21. Defines "specificity" that is required by the current statute for every Petition filed. Petitions must include exact benefit requested and documentation of how benefits are incorrect or lacking. Also requires attachment of medical records, referrals, etc. when petition seeks medical benefits. Section 1. §440.02 (41).

OCCUPATIONAL DISEASE

22. Tightens definitions of "occupational disease" and "repetitive trauma" by requiring the claimant show, by clear and convincing evidence, both causation and sufficient exposure to support causation. Partially addresses United States Sugar v. G. J. Henson. Section 6. s. 440.09 (1).

23. Makes two very important changes relating to occupational diseases. First, for an occupational disease to be covered, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence. Second, in addition to any other restrictions, to be considered a covered occupational disease, there must be an epidemiological study showing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the precise disease sustained by the employee. Addresses U.S. Sugar v. G. J. Henson. Major contributing cause can only be shown by physical examination findings and diagnostic testing. Section 19. §440.151.

MAJOR CONTRIBUTING CAUSE

24. In order to be considered "a major contributing cause", the work related accident must be more than 50 percent responsible for the injury and subsequent disability. Overturns Closet Maid v. Sykes. Major contributing cause can only be proved by medical evidence. Section 6. s. 440.09 (1).

25. Causal relationship for medical conditions not readily observable must be supported by physical examination findings or diagnostic testing. Section 6. §440.09(1).

26. Specifies that pain or subjective complaints alone is not compensable. Section 6. §440.09(1).

27. Requires employee to provide medical documentation and other evidence to dispute drug test results concerning quantities of substances identified in drug testing. This requires claimants to put forth more evidence than just their personal denial to prove that they were not under the influence at the time of the accident. Section 6. §440.09(7)(e).

28. Defines "objective medical evidence" as objective findings that correlate to the subjective complaints and confirmed by physical examination findings or diagnostic testing. Section 6. §440.09.

FRAUD

29. Prohibits recovery of workers compensation benefits when employee has intentionally engaged in insurance fraud or any criminal act for purposes of securing workers' compensation benefits, including pleas of guilty or *nolo contendre*. Section 6. §440.09.

30. Allows disclosure of any reported wage information to the carrier relating to any individual who has filed a workers' compensation claim during any quarter that is the subject of such claim(s). Division to establish forms and rules for obtaining information. Section 42. 443.1715(2)(b).

31. Requires a carrier to submit an annual report to the department detailing losses and recoveries attributable to workers' compensation fraud and authorizes the department to fine carriers for noncompliance.

32. Authorizes the Division of Unemployment Compensation to release information in certain circumstances concerning an employee's wages to determine if an injured worker is employed and receiving workers compensation benefits.

33. Incorporates certain violations of ch. 440 in the Offense Security Ranking Chart which would assist in the prosecution and sentencing of workers compensation fraud by adding certain acts as violations. (See Employer Fraud and Compliance section below)

MENTAL OR NERVOUS INJURIES

34. Specifies that mental or nervous injury due to stress, fright or excitement is not an injury for purposes of workers' compensation. Requires a physical injury to accompany mental or nervous condition for payment of benefits. Any physical condition resulting from mental or nervous injuries without physical trauma is not compensable. Physical work injury must be the major contributing cause as defined above for the need for mental or nervous treatment proven by clear and convincing evidence. Prohibit payment of benefits or provision of treatment for mental or nervous conditions arising out of depression for being out of work, pre-existing conditions, pain or other subjective complaints. Section 7. §440.093

35. Limits payment of temporary benefits for mental or nervous injuries to only 6 months after physical MMI is achieved. However, TTD/TPD for mental or nervous injuries can still not exceed 104 weeks of total TTD/TPD benefits. Section 7. §440.093(3). (Since no ttd or tpd is paid after mmi, this can only be used when someone has a subsequent injury and collects for both injures at the same time or is mmi from the physical injury.)

OUT OF STATE EMPLOYERS

36. Requires any employer with employees engaged in work in Florida to hold a Florida workers' compensation policy or endorsement. Requires department to adopt rules defining "engaged in work." Section 8. §440.10(1)(g).

WORKPLACE SAFETY

37. Extends potential consideration in premium calculation for private employers utilizing safety programs. Requires division to publicize availability of free safety programs to employers. Section 9. §440.1025

EMPLOYER FRAUD AND COMPLIANCE

38. Increases penalty to first degree misdemeanor for any employer to knowingly coerce employee to obtain certificate of exemption, discharge or refuse to hire an employee for filing a claim for benefits, discharge or discipline an employee for reporting violations of this chapter or to violate a stop-work order. Section 11. §440.105(2).

39. Subjects any employer or carrier who fails to timely provide any notice of injury to a fine not to exceed $l,000 rather than the current $00, for each failure. Within 1 calendar year, if an employer fails to timely submit more than l0% of its notices of injury to its carrier, the employer shall be subject to an administrative fine not to exceed $2,000 for each failure. Section 21. s.440.185(9).

40. Includes failure to update applications within 7 days after change in required reporting information within actions considered a first degree misdemeanor. Section 11. §440.105(3).

41. Includes knowing violation of stop work order and presentation of false information for purposes of obtaining employment or workers' compensation benefits in definition of insurance fraud. Section 11. §440.105(4).

42. Requires any injured employee making a claim for benefits to provide personal signature acknowledging the fraud statement. Refusal to sign results in suspended benefits until signature is obtained. Section 11. §440.105(7).

43. False reports of insurance fraud constitute third degree felony. Section 12. §440.1051(3).

44. Classifies an employer's misrepresentation of payroll or other information pertinent to experience rating modification factor as failure to secure proper coverage and subjects that employer to a stop work order. However, such stop work order has no effect on the employer/carrier's duty to furnish benefits. Section 13. §440.107(2).

45. Allows additional department powers to enforce workers' compensation coverage requirements including conducting investigations, inspecting businesses, examining business records, issuing subpoenae, etc. Section 13. §440.107(3).

46. Provides that issuance of a stop work order on an employer is applicable to all of that employers work sites throughout the state. Provides $1,000 penalty per day for continuation of business after a stop work order has been issued. Applies stop work orders to all affiliated business entities engaged in the same or equivalent activities. Allows fine of 1.5 times the unpaid premium against any employer misrepresenting payroll. Provides additional employer penalties for failure to comply with statute or department rules and provides department additional enforcement powers. Section 13. §440.107(7).

47. Submission of an application for workers' compensation coverage that contains false information to avoid or reduce premiums, constitutes a second degree felony. Section 28. §440.381.

48. Increases late fee for delinquent premium installments up to $25. Section 33. §627.162

49. Creates a provision for a first degree misdemeanor for any employer to knowingly create an employment relationship in which the employee has used false, fraudulent or misleading oral or written information. This language was added the last minute of the legislative session to counter the provision that it is unlawful for an employee to present any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for benefits. The opponents of this bill convinced various legislators that this language was intended to discriminate against illegal aliens. Section 11. §440.105(3)(b) and 440.105(4)(b)9.

EXCLUSIVE LIABILITY

50. Expresses that workers' compensation is the employer's exclusive liability, including vicarious liability. Section 14. §440.11(1).

51. Strengthens the exclusive remedy provision of the law by stating that an employer who provides workers' compensation for his employees is exempt from tort suit unless the employer acts with actual intent to cause injury or death. Requires that for an employee to sue in tort, employee must show by clear and convincing evidence that employee deliberately intended to harm employee *or* that employer knew or should have known that action was virtually certain to result in injury or death, and that employee was not aware of the danger which was not apparent and employer deliberately concealed the danger, prohibiting the employee from exercising informed judgment. Addresses Turner v. PCR. Inc. Section 14. §440.11 (1)(b).

MEDICAL TREATMENT

52. Requires all medical treatment to be furnished within practice parameters and protocols of treatment, including utilization review/control. Section 15. §440.13

53. Increases allowable chiropractic treatment from 18 visits or 8 weeks of treatment to 24 visits and increases from 8 weeks to 12 weeks of treatment. Section 15. §440.13(2)(a).

54. Provides that the employer/carrier is not responsible for attendant care prior to receipt of written request from the authorized treating physician setting out the time periods, level of care and nature of assistance prescribed. Prohibits retroactive prescriptions for attendant care. Section 15. §440.13(2)(b).

55. If a family member remains employed but furnishes attendant care during their non-working hours, such care is paid at federal minimum wage. Also provides that if a family member remains employed while providing attendant care, per-hour value of such care is not to exceed family member's employment hourly rate, not to exceed value of such care in the community. Eliminates the loop hole in calculation of average weekly wage when a family member provides attendant care but remains employed. The statute already addresses what is paid when the family member is not working or quits to provide the care. Section 15. §440.13(2)(b).

56. Clarifies that an employee's ability to obtain treatment on her own when the employer does not furnish treatment on request, only applies to the employee's initial treatment. Section 15. §440.13(2)(c).

57. Allows change in physician one time per accident upon claimant's request. Upon completion of change, previous physician is de-authorized. Carrier to notify de-authorized physician in writing. Carrier must provide alternate physician within 5 days (Silent as to whether business or calendar days) upon receipt of request for change. Current requirement for list of three is deleted. New physician must not be affiliated with initial physician, but carrier otherwise gets to select. If carrier fails to provide new physician, claimant may select on their own and their choice will be authorized. Failure of carrier to timely comply with this provision subjects carrier to penalties under §440.525, which range from up to $2,500 with a max of $10,000 for unknowing pattern or practice of violation and up to $20,000 with a max of $100,000 for knowing pattern or practice of violation. Section 15. §440.13(2)(f) and Section 32. §440.525(4).

58. Clarifies that a carrier must respond by telephone or in writing to request for authorization for medical care within 3 business days when the request is from an authorized health care provider. Section 15. §440.13(3)(d).

59. Will require department to establish forms for providers to report treatment and billing to carriers. Limits medical providers charge to the injured employee to only $0.50

per page for photocopies and actual costs for non-paper copies (x-rays films, etc.) Section 15. §440.13(4).

60. Requires health care providers to not only provide medical records to the employee or his attorney but also to the employer, carrier or its attorney. Section 15. s.440.13(4)

61. Employee waives physician-patient privilege when seeking medical treatment for which employee is seeking compensation. Prohibits medical providers from requiring patient's consent prior to release of records, before or after petitions for benefits is filed. If medical providers are out of state, employee must provide employer/carrier with signed release form. Section 15. §440.13(4)(c).

62. Limits each side to only 1(one) IME per accident and requires each party to be responsible for the cost of their IME. Carrier is no longer responsible for paying for or scheduling claimant's IME. Each party schedules their own IME with notice of provider, date and time to the other party. IME provider may not provide follow up care. If claimant prevails in proceedings before JCC, and JCC relies on claimant's IME opinion, then employer/carrier must pay for claimant's IME. Section 15. §440.13(5).

63. Allows parties to agree to "consensus independent medical examination" other than the IME in the event of a medical dispute. The findings of such mutually agreed examination shall be binding on all parties and constitute resolution of the dispute. Section 15. §440.13(5)(g).

64. Requires agency to establish qualifications for expert medical advisors, including training and experience with workers' compensation system and commitment to practice parameters, standards of care and protocols of treatment. If the employee prevails based on the EMA's opinion, the employer/carrier is responsible for payment of the EMA, in accordance with agency payment schedule. Section 15. §440.13(9).

65. Allows audit of medical providers by AHCA to determine if practice parameters and protocols of treatment are being followed. Section 15. §440.13(11).

66. Allows department to monitor carriers to determine if medical bills are paid timely and allows imposition of fines for each late payment that is below the minimum 95% performance standard. This is increased from the current 90% minimum performance standard. Section 15. §440.13(11).

67. Instructs 3 member panel to adopt hospital reimbursement schedule including maximum hours in which an outpatient may remain in observation status, not to exceed 23 hours. Section 15. §440.13(12)(a).

68. Provides legislative intent to increase schedule of maximum reimbursement for certain physicians effective January 1, 2004, and to pay for those increases through reductions in hospital payments. Section 15. §440.13(12)(b).

69. Reduces payments to hospitals for outpatient physical, occupational and speech therapy and outpatient non-emergency radiological and clinical laboratory services not related to surgery, to the same reimbursement schedule as those services performed by non-hospital providers. Section 15. §440.13(12)(b).

70. Reduces outpatient scheduled surgeries from 75% to 60% of usual and customary charges. Section 15. §440.13(12)(b)3. Many of these changes were necessitated due to the fact that some outpatient charges by hospitals were the highest in the nation. The savings were used to increase the physician's fee schedule.

71. Increases reimbursement for services provided by physicians licensed under ch. 458 or 459(medical doctors and osteopathic doctors) to greater of 110% of Medicare or schedule adopted by 3-Member Panel on 1/1/03. Section 15. §440.13(12).

72. Increases reimbursement for surgical procedures to greater of 140% of Medicare or schedule adopted by 3-Member Panel on 1/1/03. Section 15. §440.13(12).

73. Changes prescription prices from current level of 1.2 times wholesale price plus $4.18 to only wholesale price plus $4.18. Requires carriers to utilize pharmacy providers geographically accessible to employee. Section 15. §440.13(12)(c).

74. Allows deviation from established fee schedule when physician agree to in writing to follow identified procedures aimed at providing quality health care at reasonable costs, including but not limited to, timely scheduling of appointments, participating in return to work programs, faster reporting of treatment provided, continuing education, utilization review, quality assurance, pre-certification and case management. Section 15. §440.13(14)(b).

75. Establishes that practice parameters applicable to Chapter 440 are those established by United States Agency for Healthcare Research and Quality, in effect January 1, 2003. Section 15. §440.13(15).

76. Establishes specific statutory standards of care for provision of medical treatment. Section 15. §440.13(16).

MANAGED CARE

77. Grievance defined as being in writing, but not in a Petition, when expressing dissatisfaction of the refusal to provide or dissatisfaction with medical care. Section 16. § 440.134(1)(d).

78. Allows chiropractors and podiatrists to be managed care coordinators on managed care cases. Section 16. §440.134(1).

79. Requires carrier to pay for claimant's IME if IME provider is in carrier's managed care network. Section 16. §440.134(6).

AVERAGE WEEKLY WAGE

80. Defines wages to be determined from the date of accident and bases compensation on actual wages earned during the 13 calendar weeks prior to the date of accident (not the date of injury), excluding the week of accident at not less than 75% rather than current 90% of hours actually worked. Section 17. §440.14(1)(a).

PERMANENT TOTAL DISABILITY

81. Eliminates the social security language from the definition of "catastrophic injury" so that the social security criteria is not used to determine permanent total disability. In s. 440.15(l), new language is proposed that allows JCC's to use discretion when determining permanent total disability based on claimant's ability to perform at least sedentary employment within a 50-mile radius of their residence. Section 1. §440.02 (38)(f). (The law prior to l993 used a l00-mile radius test.) Note these changes were necessitated due to the fact that Florida has 5 times more permanent total benefit claims than the region and 3 times the national average. Further, that since l994, these benefits have increased from 4% to 22% of the benefits paid in Florida at a time when Florida has been losing the over age 65 population to other states.

82. Strengthens the definition of permanent total disability by eliminating the social security test. Redefines permanent total disability to be determined when an employee is not able to be engaged in at least sedentary employment available within a 50 mile radius of his residence. Section 18. §440.15(1)

83. Ceases permanent total disability benefits at age 75 unless the employee is not eligible for social security because the work injury prevented them from working sufficient quarters. If the accident occurs after the claimant's 70th birthday, then permanent total disability benefits will not exceed 5 years from the date following the determination of permanent total disability. Section 18. § 440.15(1)(b).

84. Clarifies that employer/carrier's right to vocational assessment is by the employer/carrier's chosen rehabilitation advisor or provider and costs for such will be borne by employer/carrier. Section 18. §440.15(1)(e).

85. Reduces supplemental benefits to 3% of weekly compensation rate, from current 5%. Section 18. §440.15(1)(f).

86. Stops all supplemental benefits at age 62, unless the employee is ineligible for social security benefits because the work injury prevented them from working sufficient quarters. Addressed Burger King Corp. v. Moreno and Wilkins v. Broward County School Board, and stops supplemental permanent total benefits for those who become permanently and totally disabled after age 65, when they are eligible for social security. Supplemental benefits are already eliminated under current law for those who become permanently and totally disabled before age 62 and for every PTD between ages 62 to 65. Section 18. §440.15(1)(f)1.

CATASTROPHIC TEMPORARY TOTAL DISABILITY

87. Corrects Winter Haven Hospital v. Nevius and clarifies that temporary total catastrophic benefits are paid only for the first 6 months after the accident, but only to those who are not eligible for or have not been determined to be permanently and totally disabled. Returns statute to original intent since 1974 The First DCA re-interpreted this statute in Nevius. Section 18. §440.15(2)(b).

88. This is the only change that was made to the temporary total disability benefits. 93.4% of all injured workers receive these benefits for approximately 52 weeks even though eligibility is for l04 weeks.

IMPAIRMENT INCOME BENEFITS

89. Changes the formula and duration for impairment benefits from 50% of the employee's compensation rate to 75% (subject to the maximum compensation rate under 440.12). however, such benefits are reduced by 50% for each week in which the employee has earned income equal to or in excess of their AWW. Section 18. §440.15(3)(c). Before this change, these benefits are calculated at 50% of the compensation rate.

90. Impairment income benefits are payable biweekly. Section 18. §440.15(3)(c).

91. Impairment income benefits are payable for physical impairments only. Limits psychiatric impairment to 1 percent for the calculation of permanent impairment and requires psychiatric impairment must be proven to be work related. Section 18. § 440.15(3)(c).

92. MMI and impairment rating must be assigned by authorized treating physician. If another physician assigns, the treating physician must be provided with the certification and rating within 10 days and must indicate agreement or disagreement in writing to the carrier. Section 18. § 440.15(3)(d).

93. Requires carrier to report to department all MMI certifications and impairment ratings within 14 days after overall MMI has been reached. Treating doctor must be notified of requirements if MMI is not reached within 98 weeks, decreased from 102 weeks. Section 18. §440.15(3)(d).

94. Eliminates the payment of supplemental benefits based on assignment of impairment rating greater than 20% in that so few collect so as to increase the benefits for those who are entitled to impairment benefits. Section 18. §440.15(3).

95. Establishes new schedule for payment of impairment income benefits based on permanent impairment rating assigned. 2 weeks per percentage point if impairment rating is 1-10%; 3 weeks per percentage point if impairment rating is 11-15%; 4 weeks per percentage point if impairment rating is 16-20% and 6 weeks per percentage point if impairment rating is 21% or higher. The system prior to this law change provided that injured workers entitled to these benefits collect 3 weeks per percentage point of impairment calculated at 50% of the compensation rate. Section 18. §440.15(3)(g).

TEMPORARY PARTIAL DISABILITY BENEFITS

96. Clarifies that payment of temporary partial disability benefits can be paid on a schedule equivalent to the employer's payroll periods if the employee has returned to work but is earning less than 80% of her AWW. A partial week may be paid to accomplish this schedule. Section 18. §440.15(4).

97. TPD benefits are only payable if overall MMI has not been reached and the claimant's physical injuries from the work accident prevent them from working full duty. §440.15(4).

98. Once the carrier has notice that employee can work with restrictions, carrier must furnish TPD informational letter to employee and employer explaining possible benefits and responsibilities for TPD. Section 18. §440.15(4)(b).

99. If employee is working but earning less than 80% of AWW, TPD payments are due no later than the 7th day following the last day of each biweekly work period. Section 18. §440.15(4)(c).

100. If employee is unable to return to work within his restrictions, TPD shall be paid no later than the last day of each biweekly period. Employee's failure to notify carrier within 5 days of returning to work, shall result in suspension of TPD until proper notification is provided. Section 18. §440.15(4)(d).

101. No TPD is payable if employee is terminated based on misconduct. Section 18. §440.15(4)(e).

102. Any weeks that an employee refuses employment are counted in the 104 weeks for purposes of computing TTD or TPD. Section 18. §440.15(6).

103. If employee leaves employment while on restricted duty, without just cause as established by JCC, TPD shall be payable based on deemed earnings as if employee had kept working. Section 18. §440.15(7).

104. Note the these benefits were not cut nor were the temporary total disability benefits for which an employee is entitled to up to l04 weeks for both of these types of benefits combined.

SUBSEQUENT INJURY/PRE-EXISTING CONDITIONS

105. Only disability and medical treatment connected to the work injury is compensable, excluding any disability or medical condition existing at the time of the impairment rating or the accident, regardless of whether the pre-existing condition was disabling at the time of the accident and without considering whether the pre-existing condition would be disabling without the compensable accident. Section 18. §440.15(5).

106. Disability and medical benefits shall be paid, apportioning out that percentage of the need for care attributable to a pre-existing condition. Section 18. §440.15(5)(b).

FUNERAL AND DEATH BENEFITS

107. Increases funeral expenses to $7,500 and death benefits to a max of $150,000. Section 20. §440.16.

CARRIER COMPLIANCE

108. Subjects any employer or carrier who fails to timely provide any notice of injury to a fine not to exceed $1,000 for each failure. Section 21. §440.185(9).

109. Upon receipt of notice of injury, carrier must furnish to employee notification of availability of EAO services including description of services available, toll free telephone number, information brochure and any other necessary information. Section 21. §440.185(12).

110. Requires payment for total disability or death benefits to be made no later than the 14th calendar day following notification of the injury of death. Section 24. §440.20(2).

111. If first 7 days of disability are nonconsecutive or delayed, the first installment of compensation is due on the 6th day after the first 8 calendar days of disability. Section 24. §440.20(2)(a).

112. Requires carrier to pay or disallow medical bills within 45 days after receipt, submitted in accordance with department rules. Section 24. §440.20(2)(b).

113. Requires carrier to furnish notice of cessation of benefits to employer, employee and department, rather than just department, in format defined by department. Section 24. §440.20(3).

114. Refines 120 day pay and investigate provision to apply to situations in which carrier is uncertain of obligation to provide all benefits or compensation. Section 24. §440.20(4).

115. Penalties shall not apply to late payment beyond the employer/carrier's control. Section 24. §440.20(6)(a).

116. Provides carrier penalties for late payments or disallowance or denials of medical. hospital, pharmacy or dental bills that are below a 95% minimum performance standard, payable to the workers Compensation Administrative Trust Fund in the amount of $25 for each bill below the 95% but above the 90% timely performance standard and $50 for each bill below 90% timely performance standard. Section 24. §440.20(6)(b).

117. Penalties for late payment of compensation shall be imposed if below a 95% minimum timely performance standard, in the amount of $50 per number of installments of compensation below 95% timely performance standard but above 90% timely performance standard and $100 per number of installments paid below 90% timely payment performance standard. Section 24. §440.20(8)(b).

118. Requires carrier to complete an onsite audit of any employer the department determines has misrepresented or concealed payroll or other information pertinent to computation and application of an experience modification factor. The department must receive a copy of the audit report upon completion. If the policy is cancelled, the carrier can complete said audit in conjunction with the cancellation. Section 28. §440.381.

119. Requires insurer to provide 10 days notice of cancellation to policy holder for non-payment. Section 29. §440.42.

120. Establishes stricter guidelines for department audit/examination of any carrier, third-party administrator, servicing agent or other claims-handling entity. Such audits/examination may include, but are not limited to, patterns or practices of unreasonable delay in claims handling; timeliness and accuracy of payments and reports; or patterns or practices of harassment, coercion or intimidation of

claimants. Department may specify by rule the documents required to be contained in each claims file. Provides greater investigatory powers to department. Section 32. §440.525.

121. Department discovery of any carrier violation of Chapter 440 may result in administrative penalties, which range from up to $2,500 with a max of $10,000 for unknowing pattern or practice of violation and up to $20,000 with a max of $100,000 for knowing pattern or practice of violation. Such penalties may not be recouped from the rate base, premium or in any rate filing. The Department shall adopt penalty guidelines. Section 32. §440.525(4).

SPECIFICITY

122. Specifies that petitions may only contain claims that are ripe, due and owing at the time of filing. Allows only claims mediated or stipulated by the parties to be adjudicated by JCC. Section 22. §440.192.

123. Tightens up the claims process by strengthening specificity in petitions including, if the employee is under the care of a physician for an injury, a copy of the physician's request for authorization or recommendation for treatment or attendance must be attached to the Petition. Section 22. §440.192(2)(i)

ALTERNATIVE DISPUTE RESOLUTION/ARBITRATION

124. Allows parties to mutually agree to binding arbitration in lieu of any other remedy to resolve all disputes regarding an injury. Section 23. §440.1926.

JCC PROCEDURES

125. Current law requires a Judge of Compensation Claims to consider, at the time of settlement, whether the settlement allocation provides for the appropriate recovery of child support arrearages. The bill makes it clear that neither the employer nor carrier has the duty to investigate or collect information regarding child support arrearages and prohibits the clerk of court from assessing any costs or fees for providing this information. Section 24. §440.20(11)(d).

126. Clarifies the current statute that parties have 30 days to resolve any petition and that a mediation is not ordered until 40 days after receipt of petition. This creates a 10 day window for the Judge of Compensation Claims to either schedule state mediation or order private mediation. The manner in which current language has been interpreted does not allow the parties the time to resolve their differences before mediation is scheduled. The old Request for Assistance allowed sufficient time to resolve differences without litigation. Rather than decrease litigation, the interpretation of this statute passed in 2002 has increased litigation. If multiple petitions are pending or filed after mediation has been scheduled, the JCC shall consolidate all petitions into one mediation. Section 25. §440.25(1).

127. Allows continuance of mediation upon agreement by the parties. Section 25. §440.25(1).

128. Deletes requirement for completion of pretrial stipulation at mediation. Allows submission of written pretrial stipulation or, if parties fail to agree to written submission, requires 14 days notice of pretrial from JCC. Section 25. §440.25(4).

129. Requires JCC to give notice of final hearing within 14 days advance notice. Section 25. §440.25(4)(c).

130. Allows claimant to waive timeframes for holding final hearing within 210 days after filing petition for good cause shown. Section 25. §440.25(4)(d).

131. Eliminates requirement of JCC to submit report to Deputy Chief Judge for any order that is not issued within 30 days following the final hearing. Section 25. §440.25.

132. Includes average weekly wage disputes in those which can be adjudicated by JCC without necessity of hearing. Section 25. §440.25(g).

133. No mediation shall be scheduled unless requested by a party for claims under $5,000, AWW, mileage reimbursement or medical only claims. Section 25. §440.25(h).

ATTORNEY FEES

134. Eliminates hourly rates and requires attorneys' fees to be paid on a contingency fee basis. In lieu of the contingency fee there can be one time per accident one medical only claim, with a fee up to $l,500 based on an hourly rate of $150, should the JCC find such additional fee is warranted. This change was necessitated due to the fact that when an attorney is involved in a case in Florida as compared to an attorney being involved in a case in any other state, the average cost per claim increased by 40%. Section 26. §440.34.

135. Prohibits attorney fee for any issue that was ripe, due and owing and reasonably could have been addressed, but was not addressed, with earlier issues for the same accident. Section 26. §440.34(2).

136. Creates provision for offer of settlement to be communicated in writing to claimant/attorney at least 30 days before final hearing. If such offer is rejected, "benefits secured" for purposes of attorney fee calculation are limited to only those benefits awarded at trial that exceed the offer of settlement. The offer of settlement must be specific to each issue pending, including attorney's fees and costs, and whether the offer for the issues is severable. Section 26. §440.34(2).

137. Costs are payable by the non-prevailing party, not to include attorney fees. Section 26. §440.34(3).

RETRAINING AND EDUCATION

138. Includes community colleges and vocational-technical schools to be involved in retraining programs provided to injured workers. Includes securing a GED within provision of appropriate training and education. Such expenses will come from the Workers' Compensation Administrative Trust Fund. Section 31. Today, if an injured worker seeks rehabilitation and does not have a GED, he does not qualify with the state for such benefits. These are the injured workers that should be accepted into a rehabilitation program, §440.491(6)(a).

139. Provides training and education temporary total disability benefits for workers who have achieved MMI but are unable to earn at least 80% of the compensation rate. However, such benefits shall not be in addition to the 104 weeks of TTD and/or TPD. Section 31. §440.491(6)(b).

140. Any employee who refuses such training forfeits any additional training and education and any additional payment for lost wages under Chapter 440. The department shall adopt rules for retraining and carriers shall inform injured workers of availability and eligibility requirements. Section 31. §440.491(6)(b).

JOINT UNDERWRITING ASSOCIATION (JUA)

141. Changes the composition of the JUA Board of Governors to only 9 members - 2 appointed by the Financial Services Commission, 2 representing domestic insurers, 2 representing foreign insurers, 1 representing the state's largest property and casualty insurer and 1 consumer advocate. Section 35. §627.311(4).

142. Requires all JUA policy holders to participate in safety program. Section 35. §627.311(4)(c)11.

143. Establishes 4 JUA subplans while the current system only allows 3 subplans. Section 35. §627.311(4)(c)22.

144. The newly created subplan D must only include employers with an experience modification factor of 1.10 or less and 15 or fewer employees, or a 501(c)(3) corporation that receives more than 50% of its funding from gifts, grants, endowments, or federal or state contracts. Subplan D rate will be determined in the same manner as voluntary market rates, but the Board must also include a surcharge to ensure that the JUA subplan D does not compete with the voluntary market rate, not to exceed 25% higher than the voluntary market rate. Section 35. §627.311(4)(c)22.

145. Subplan D will have a depopulation plan, making a subplan D insured ineligible for JUA coverage if the participant is offered coverage in the voluntary market:

a. During the first 30 days of coverage under subplan D;

b. Before a policy is issued under subplan D;

c. By issuance of a policy upon expiration or cancellation of the subplan D policy; or

d. By assumption of the subplan's obligation with respect to an in-force policy.

The premium for risks assumed by the voluntary market carrier will be the same as the subplan premium plus the subplan D surcharge for the first 2 years. Section 35. §627.311(4)(c)23.

146. Subplan D applications and policies will contain a statement explaining that the policy could be replaced by voluntary market coverage if an offer of coverage is obtained and the policyholder is no longer eligible for subplan D. Section 35. §627.311(4)(c)24.

147. If the subplan D policyholder is a not-for-profit corporation under s. 501(c)(3) the surcharge shall not exceed 10%. Section 35. §627.311(4)(c)22.

148. Only subplans C and D may be assessable. Subplan C participants cover any deficits only in subplan C and Subplan D participants cover any deficits only in subplan D. No other entity shall be assessed for deficits in any subplan. Section 35. §627.311(4)(d).

LAW ENFORCEMENT

149. Exempts certain law enforcement and correctional officers from these statutory changes to disability benefits and catastrophic injury for purposes of determining in line of duty disability. Those determinations will use the standards in effect in Florida Statutes 2002. Section 46.

MISCELLANEOUS REPORTS

150. Requires independent actuarial review of workers' compensation rate making organization at least once every other year. Section 34. §627.285

151. Requires Department of Financial Services and Division of Insurance Fraud to each provide reports to Legislature detailing ability to enforce Chapter 440 with recommendations for better enforcement, including number of cases opened, reported, prosecuted, etc. Section 37 and Section 43. §626.989.

152. Establishes a Joint Select Committee on Workers' Compensation Rating Reform to study the merits of requiring each workers' compensation insurer to individually file its ratings and use a lost cost filing made by a rating organization. Section 40.

153. Requires each workers' compensation insurer to provide an annual report to the department by August 1 of each year, detailing its experience in implementing and maintaining an anti-fraud investigative unit or anti-fraud plan. Provides penalties for failure to submit same Section 44. §626.9891.

EFFECTIVE DATE

154. The effective date is 10/1/03 except as specifically noted otherwise to be 1/1/04.

Mary Ann Stiles, Esquire, General Counsel of Associated Industries of Florida and President & CEO of Stiles, Taylor & Grace, P.A., was once again the leader of the business community's workers' compensation reform effort, as she has been since the 1970's. Stiles was the major drafter of the business community's proposed legislation, most of which passed. She also put together a major coalition from within the business and insurance communities, and led the coalition to the successful passage of the most significant workers' compensation reform bill anyone can remember. For Stiles, it was an effort of four long years.