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## **What's New In Our Industry-An Update Summary of Bills Filed in the Current Legislative Session Having Applicability to Workers' Compensation, Directly or Indirectly.**

### **Regular Legislative Session (January 11 – March 11, 2022)**

Bills filed in the regular legislative session having workers' compensation relevancy are listed below. Status of bills is noted in **bold** in regards to committee assignments or actions taken by full House and Senate.

SB 7018 PCB GOS 22-04 Personal Identifying Information amends Section 440.185, Florida Statutes, to exempt from public records the disclosure of personal identifying information of injured or deceased employees contained in certain records held by the Department of Financial Services pursuant to the workers' compensation law. This exemption from disclosure is not subject to the Open Government Sunset Review Act. **Passed Senate; in House; Substitution for HB 7013; Senate ordered enrolled.**

SB 1476 Prescription Drugs – Pharmacy Benefit Managers allows for the Office of Insurance Regulation to conduct market conduct examinations on pharmacy benefit manager including those organizations as defined in Section 440.02, Florida Statutes. Requires such organizations to register with the appropriate office and provide penalties for failure to register. **Now in Appropriations Subcommittee.**

SB 1394 Toxic Mold Protections Act bill creates Section 83.252, F.S. Creates notice requirements by owners of buildings and tenants to report mold being present in buildings. Defines "mold." Creates a Toxic Mold Protection Advisory Council to recommend "permissible exposure limits," remediation standards and guidelines and provides for the Department of Health in consultation with the advisory council to develop and adopt permissible exposures including standards for assessing whether defective mold exposures present a public health threat. Establishes guidelines for identifying mold exposures/remediation. Provides procedures for enforcement of adopted guidelines. **Appropriations Subcommittee, Health Policy. See also HB667.**

CS/SB 156, Companion Bill HB 275 Loss Run Statements - Amends Section 626.9202 for all lines of insurance with certain exceptions such as group health and life insurance. Requires the provision of loss run statements within 15 calendar days after an individual or entity designated by the insurer receives the insured's written request. **Passed Senate; House placed on calendar.**

HB 1023 – Insolvent Insurers – Florida Workers' Compensation Insurance Guaranty Association Redefines factors in determining workers' compensation and employer's liability insurance rates to include past loss experience and prospective loss experience for insurers whose data is missing from statewide experience due to insolvency. Prior relevant information may be used to assess the impact on rates. Advanced payments/assessments to the guaranty fund association for such insolvent insurers can be ordered in quarterly payments throughout the assessment years. Allows for insolvent insurers to elect to not recoup advances. **Commerce; Identical Bill CS/SB 1430.**

CS for SB 1430 - Insolvent Insurers/Officers and Directors Current law allow for officers and directors of insolvent insurers to serve in that capacity under certain conditions. Amendment states that such officers and directors may serve in those capacities unless it is determined that the personal actions or omissions of the officer or director were a significant contributing cause of an insolvency. **Identical Bill HB 1023.**

**HB 425; compare SB 664-In Appropriations Subcommittee;** Post-traumatic Stress Disorders Are payable as a compensable occupational disease for first responders if the first responder's personal involvement in the events creating such condition is documented in a report maintained by the employing agency. Notice of Injury for post-traumatic stress disorders must be made in accordance with Section 440.151(c), F.S., and is measured from the date of one other qualifying events causing such condition or the diagnosis of the disorder, whichever is later. Extends post-traumatic stress disorder claims to part-time law enforcement officers and auxiliary law enforcement officers. Requires evidence-based educational training for first responders concerning coping strategies to mitigate traumatic stress. Provides for post-traumatic stress disorders to correctional officers and part-time correctional officers and correctional probation officers and part-time correctional probation officers. Provides for confidentiality of services provided by peer support officer from divulging certain information or testing about certain communications. Provides exceptions. **Committee Substitute text filed.**

HB 689, see also SB 1066 First Responders - now in Rules, placed on calendar in Senate, 2<sup>nd</sup> reading– Post Traumatic Stress Disorders - Amends Section 112.185, Florida Statutes, providing that notice of a post-traumatic stress disorder claim by first responders must be made within certain timelines (qualifying events) or when the diagnosis of the disorder is made, whichever is later. **State Affairs.**

CS/HB 425 Post-Traumatic Stress Disorder extends the definition of "First Responders" for post-traumatic stress disorder entitlements pursuant to §112.1815, Florida Statutes, (and Chapter 440, F.S.). Extends entitlements to part-time and full-time auxiliary law enforcement officers and part-time and full-time probation officers and part-time and full-time correctional probation officers. Post-traumatic stress disorders are deemed to be a compensable occupational disease within the meaning of §440.151, F.S. Special provisions related to the compensability of claims by correctional officers and part-time correctional officers are provided for that created the post-traumatic stress disorder. Post-traumatic stress disorders are not subject to apportionment or

limitations of compensation as related to other benefits payable under the workers' compensation system. Notice of such claims by the worker is measured from the date of the event that caused the post-traumatic stress disorder or the manifestation of the disorder, whichever is later. A claim under this section must be properly noticed within 52 weeks after the qualifying event. An employing agency of a correctional officer or part-time correctional officer must provide education training related to mental health awareness.

CS/HB 503 Audits for Premium Calculations– Bill applies to multiple issues but those that have specific application to workers' compensation issues include amendments to Section 440.381, Florida Statutes. This particular provision relates to audits to ensure proper payments of workers' compensation premiums. Except for construction class codes, audits must be made at least bi-annually. Construction employers must be audited at least annually only if the estimated annual premium is \$10,000 or more. **Commerce**. See also SB 1874 – **Appropriations Subcommittee; CS/CS HB 959 – Amendments filed; Commerce**.

CS/SB 1874 Department of Financial Services bill applies to multiple issues but those that have specific workers' compensation application include the following:

1. Amends Section 120.541, Florida Statutes. Schedules of maximum reimbursement allowances developed by the three member panel are expressly exempted from application of the need for an economic analysis for rule development and legislative action/ratification even when a proposed rule creates costs in excess of \$1million in aggregate within 5 years after the implementation of the rule. See HB 959 **Amendment filed**, SB 1274, HB1123
2. Amends Section 440.02, F.S., concerning the definition of “employer” to include employment agencies that provide employees to other entities or persons.
3. Amends Section 440.05, F.S., related to officer exemptions from workers' compensation coverage and deletes those seeking an exemption from providing Social Security numbers. Requires Applicant for exemption to show as a part of the exemption process a valid driver's license. Requires corporate officers electing an exemption to complete an online workers' compensation coverage and compliance tutorial developed by the department. See HB 959. Requires the department upon request by a carrier to identify each of its policy holders where a Notice of Election to be Exempt or Notice of Revocation to be Exempt has been received. See HB 959. A Certificate of Election to be Exempt must contain notice that the certificate does not constitute a license issued by the Department of Business and Professional Regulations (DBPR) to do business. See HB 959.
4. Certificates for the Election to be Exempt apply only to the exemption of the specific officer named in the election. Deletes the provision that the exemption only applies to a specific employer. See HB 959.
5. Amends Section 440.107, F.S., to extend time of employers to 21 days to obtain workers' compensation coverage after being notified that proper workers' compensation coverage has not been obtained.

6. Amends Section 440.107, F.S., precluding an employer assessed penalty from entering into a payment schedule if the employer has not fully paid a possible previous penalty assessment. Provides additional limitations on employers who have not paid for proper workers' compensation premiums resulting in a penalty assessment or stop work order. Allows for reductions in penalty assessments if the employer correctly passes a test from an online workers' compensation coverage and compliance tutorial. See HB 959.
7. Amends Section 440.13(12), F.S., requiring the payment of medical costs based upon an agreed upon contract price between the medical provider and the payor or if there is no agreed upon contract price, the provider's billed charges or the maximum reimbursement allowed in the appropriate schedule adopted by the three member panel, whichever is less. See HB 959.
8. Amends Section 440.13(12), F.S., which allows for the Department to adopt rules to assist the three member panel in the development of fee schedules.
9. Amends Section 440.185, F.S., that requires the carrier to provide to the injured worker an informational brochure developed by the Department. Such notification must be by regular mail or email within 3 business days after being notified of an accident.
10. Amends Section 440.381, F.S., which requires the financial services commission in consultation with the Department to develop rules related to audits. The rules must ensure that audits are properly performed bi-annually for non-construction employers. Employers in the construction class that generate premium of \$10,000 or more must be audited annually (physical on-site audits for new and renewal policies). See HB 959.

HB 1123 Workers' Compensation Health Care Provider Assessment Manual Ratification. In regards to adopting any administrative rule, there must be an economic analysis showing whether a proposed rule will create a cost of in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. If so, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives for ratification by the Legislature. Historically, it has been determined that updating the Workers' Compensation Fee Schedule for physicians would create costs in excess of \$1 million; however, the Legislature would never agree to ratify such increases in costs and accordingly for several years, there have been no increases in fee schedules for health care providers providing services as provided for in the workers' compensation system. This bill would ratify the rule adopting the fee schedule adopted by the three member panel. This ratification will not be included in the Florida Statutes. **Commerce. Compare Identical Bill SB 1274 placed on Senate calendar.**

SB 734 Public Health Officers - Vaccinations Deletes actions that can be taken by the Public Health Officer to order individuals to be vaccinated. Retains the ability of the Public Health Officer to order an individual to be examined, tested, treated, isolated or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. **Health Policy; Judiciary; Rules; Identical Bills HB 6009, 6069 (no referrals to committees in 2022).**

SB 742 Pharmacies and Pharmacy Benefit Managers Amends Section 624.3161, Florida Statutes, allowing for the Department to make a market conduct examination of Pharmacy Benefit Managers as defined by Section 624.490, Florida Statutes and pharmacies licensed under Chapter 465, F.S. The purpose of the audit is to determine compliance by the person or entity examined with the applicable provisions of Chapter 440 and other statutory provisions. Establishes requirements for suspension or revocation of pharmacy benefit manager's registration or imposition of fines if the pharmacy benefit manager is guilty of certain actions. Outlines actions that cannot be taken by pharmacy benefit managers and provides what must be contained in pharmacy benefit manager contracts that are entered into or amended on or after January 1, 2023 including the maximum allowable cost for a prescription drug. Allows for the Department to have access to all financial or other records to be reviewed as a part of an audit. **No referrals to Committee in 2022; Compare HB 357. Placed on House calendar; SB 1476 – Appropriations Subcommittee.**

HB 453 Presumptions of Compensability - Heart and Hypertension Claims. As a condition to a presumption of compensability under the Workers' Compensation Act for these types of injuries, the claimant must have successfully passed the physical examination required for employment upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer which fails to reveal any evidence of tuberculosis, heart disease or hypertension. The employing agency must maintain records of the physical examination for at least 5 years after the employee's separation from the employing agency. If such physical examinations are not retained for this period of time, it is presumed that the employee has met the requirements of a physical exam showing no evidence of having tuberculosis, heart disease or hypertension. **Commerce.**

SB 688- Florida Family and Medical Leave Act is created by adding Chapter 444, Florida Statutes, which provides paid family and medical leave to employees for the birth, adoption, or foster care placement of a new child. The bill recognizes that the majority of employees in Florida are unable to take family and medical leave (federal statute) because they are unable to afford leave without pay. Such paid leave shall be for 12 months and will run concurrently with leave taken under the Federal Family and Medical Leave Act. The employer must maintain and pay for coverage for a group health plan during the leave and the employee must return to work in the same position after the period of leave that he had previously. Medical leave insurance benefits are created. **No reference to Committee in 2022.**

House Bill 295 Employer Leasing Companies (PEOs) Contractual arrangements between PEOs and client companies engaged in the construction industry (contractors and subcontractors) must provide that all employees who are hired by contractors/subcontractors or a leasing company (leased or non-leased) are deemed employees of the leasing company for purposes of workers' compensation coverages. Requires at least a 10-day notice to the construction company client of cancellation of the contract allowing the client company to cure any contractual defaults or deficiencies. Precludes employee leasing companies from sponsoring a self insurance program for health benefits unless an admitted insurance carrier has issued a policy of insurance being primarily responsible for the obligations of the health plan. If the employee leasing company terminates its contractual agreement with a construction client company, it must send the Notice

of Cancellation by first class mail to the client company at its last known address and to leased employees and non-leased employees, providing information as to the date of cancellation.

Client companies engaged in the construction industry must make available to the licensed employee leasing company records necessary to verify payroll and must allow leasing companies to make physical inspections of the client company's operation. If there is a failure to provide information and an audit cannot be completed, the client company shall pay a penalty not to exceed three (3) times the most recent estimated annual premium. If a client company misrepresents payroll or employee duties, attorney fees and penalties are enforceable in the circuit court having jurisdiction over the licensed employee leasing company. If an accident occurs on the job to an employee not reported to the leasing company, the client company shall indemnify the leasing company for all benefits paid to or on behalf of the injured employee plus attorney fees.

Senate Bill 200 - First Responder Definition Expanded – See Identical Bill HB 49 - Expands the definition of "First Responders" for the determination of compensability of employment related accidents and injuries to include correctional officers as defined in s. 943.10(2), correctional probation officers as defined in s. 943.10(3) and 911 public safety telecommunicators as defined in s. 401.465(1). Includes volunteers in these professions. Requires at least one hour of continuing education annually which must include specific training on evidence-based coping strategies to mitigate traumatic stress in first responders as well as information on suicide prevention and other topics. **No reference to Committee in 2022.**

Senate Bill 468 –Workers' Compensation Premiums-Audits - Provides for the adoption of rules related to audits of payroll and classifications to ensure that appropriate premiums are charged for workers' compensation coverage (construction and non-construction). Such rules must ensure that audits are performed by carriers and employers. Audits must be performed at least biennially. Employers paying premiums in the construction industry sufficient to be experience rated must be audited at least annually. For employers in the construction industry, the audit must be a physical on-site audit for new and renewal policies if the estimated annual premiums are \$10,000 or more. Amends s. 440.381. **Passed Senate, Senate engrossed; in House Messages.**

House Bill 17 – Telehealth Medical Providers Prescribing Controlled Substances may not use telehealth to prescribe controlled substances listed in Schedule II of s. 893.03, except for treatment for a psychiatric disorder, inpatient treatment at a licensed hospital, treatment of a patient receiving hospice services, or treatment as a resident in a nursing home facility. **Temporarily postponed on second reading in House.**

House Bill 41 – Litigation Financing Consumer Protection Act. Litigation financing is described as being a litigation financier providing funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of a consumer's civil action or claim. Workers' compensation claims are specifically excluded from the definition of litigation financing. **Withdrawn.**

House Bill 117 – Covid-19 and Infectious Diseases In regards to emergency rescue and public safety workers (firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer) employed full-time by the state or any political subdivision, Covid-19 and infectious disease are presumed to be compensable under the Workers' Compensation Act. Such

conditions are presumed to be suffered in the line of duty, unless the contrary is shown by competent evidence. The employee must verify by written declaration that to the best of his or her knowledge and belief that he or she had not been exposed, outside the scope of his or her employment, to any person known to have Covid-19 or the infectious disease. In the case of an infectious disease, such employee must have contracted the infectious disease during a public health emergency declared in accordance with s. 381.0031, Florida Statutes. A similar bill (HB 53) was filed but withdrawn. See SB 774.

Senate Bill 432; See Identical Bill HB 391 – Judicial Assistants. Amends s. 110.071, F.S., Personal information related to these individuals and their families are exempt from public records disclosure requests. **Government Oversight and Accountability.**

Senate Bill 540 – Prescriptions by Psychologists – Similar Bill HB 319. Now in Professions and Public Health. Provides for the Board of Psychology to certify psychologists to prescribe medications including controlled substances in the treatment of patients. A method of certification and renewal is provided for. **Referred to Health Policy; Appropriations Subcommittee; Rules.**

Senate Bill 594 – Covid-19 – A governmental entity may not require persons to provide any documentation certifying Covid-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the governmental entities operations in this state or as a condition of licensure or certification in this state. A person aggrieved by a violation of this law would have a right of action in circuit court for injunctive or other equitable relief and is entitled to recover damages and reasonable attorney fees for each violation. Establishes criteria to determine the efficacy of using Covid-19 vaccine. (See subject of Special Legislative Session.) **Referred to Community Affairs; Commerce and Tourism; Rules. Compare to HB 0075.**

**For consideration by the Committee on Appropriations. Judges of Compensation Claims (JCC) 576 – 0225-22 amends Section 440.44(5) deleting the statute’s requirement that there be 17 district offices, 31 Judges of Compensation Claims, and 31 mediators as they exist on June 30, 2001.**