

By Senator Gutman

34-846-98

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 20.171, F.S.; creating the Workers'
4 Compensation Appeals Commission within the
5 Department of Labor and Employment Security;
6 providing for its membership, terms, powers,
7 and duties; amending s. 440.02, F.S.;
8 redefining the terms "wages" and "catastrophic
9 injury"; amending s. 440.05, F.S.; providing
10 that specified persons may not be exempt;
11 amending s. 440.09, F.S.; requiring findings by
12 a psychiatrist for specific coverage; providing
13 a rebuttable presumption; amending s. 440.10,
14 F.S.; revising exemptions from liability;
15 amending s. 440.107, F.S.; increasing civil
16 penalties against employers; amending s.
17 440.13, F.S.; providing for medical treatment
18 in a managed care arrangement; providing for
19 costs associated with independent medical
20 examinations; amending s. 440.134, F.S.;
21 defining the terms "informal grievance,"
22 "formal grievance," and "certified case
23 manager"; authorizing employers who self-insure
24 to opt out of mandatory managed care
25 arrangements; providing procedures for managed
26 care arrangement grievances; revising
27 compliance procedures; amending s. 440.14,
28 F.S.; revising criteria for determination of
29 pay; amending s. 440.15, F.S.; providing for
30 eligibility for permanent total disability,
31 temporary total disability, permanent

1 impairment, and wage-loss benefits;
2 establishing a system for wage-loss benefits;
3 revising compensation for temporary partial
4 disability; amending s. 440.191, F.S.;
5 requiring employees to provide additional
6 notice when seeking benefits; amending s.
7 440.192, F.S.; revising procedures for
8 resolving benefit disputes; amending s. 440.20,
9 F.S.; removing a process for denying
10 compensability and the corresponding notice;
11 providing procedures for approving or
12 disapproving lump-sum settlements; amending s.
13 440.34, F.S.; revising criteria for attorney's
14 fees; creating s. 440.595, F.S.; authorizing
15 the Division of Workers' Compensation to
16 administer oaths and subpoena witnesses and
17 materials; creating s. 440.596, F.S.; creating
18 a nonprofit corporation to be known as the
19 Florida Workers' Compensation Management Board,
20 Incorporated; providing for its membership,
21 terms, powers, and duties; providing an
22 effective date.

23

24 Be It Enacted by the Legislature of the State of Florida:

25

26 Section 1. Subsection (3) of section 20.171, Florida
27 Statutes, is amended, and subsection (5) is added to that
28 section, to read:

29

30 20.171 Department of Labor and Employment
31 Security.--There is created a Department of Labor and
Employment Security.

1 (3) The following commissions are established within
2 the Department of Labor and Employment Security:

3 (a) Public Employees Relations Commission.

4 (b) Unemployment Appeals Commission.

5 (c) Workers' Compensation Appeals Commission.

6 (5)(a) There is created within the Department of Labor
7 and Employment Security a Workers' Compensation Appeals
8 Commission to consist of a presiding judge and four other
9 judges, all to be appointed by the Governor. Each appointee
10 must have the qualifications required by law for judges of the
11 District Courts of Appeal. In addition to these
12 qualifications, the judges of the commission must be
13 substantially experienced in the field of workers'
14 compensation.

15 1. Initially, the Governor shall appoint after October
16 1, 1998, but before May 15, 1999, two judges for terms of 4
17 years, two judges for terms of 3 years, and one judge for a
18 term of 2 years. Thereafter, each full-time judge shall be
19 appointed for a term of 4 years, but during the term of office
20 may be removed by the Governor for cause.

21 2. The appointments shall be made from nominees
22 submitted to the Governor by the Supreme Court Judicial
23 Nominating Commission. The Supreme Court Judicial Nominating
24 Commission shall nominate to the Governor by August 1, 1998,
25 fifteen candidates for the initial five appointments.

26 3. Before the expiration of the term of office of a
27 judge, the conduct of the judge shall be reviewed by the
28 Supreme Court Judicial Nominating Commission. A report of the
29 Supreme Court Judicial Nominating Commission regarding
30 retention shall be furnished to the Governor no less than 6
31 months before the expiration of the term of the judge. If the

1 Supreme Court Judicial Nominating Commission issues a
2 favorable report, the Governor shall reappoint the judge.
3 However, if the Supreme Court Judicial Nominating Commission
4 issues an unfavorable report, the Supreme Court Judicial
5 Nominating Commission must nominate three candidates for
6 appointment. If a vacancy occurs during an unexpired term of a
7 judge on the Workers' Compensation Appeals Commission, the
8 Supreme Court Judicial Nominating Commission shall nominate
9 three candidates for appointment.

10 4. The Workers' Compensation Appeals Commission judges
11 are subject to the jurisdiction of the Judicial Qualifications
12 Commission during their term of office.

13 (b) The presiding judge may, by order filed in the
14 records of the commission and with the approval of the
15 Governor, appoint associate judges to serve as temporary
16 judges of the commission. The appointment may be made only of
17 a currently commissioned judge of compensation claims. This
18 appointment must be for such periods of time as not to cause
19 an undue burden on the caseload in the judges's jurisdiction.
20 An associate judge appointed shall receive no additional pay
21 during the appointment except for expenses incurred in the
22 performance of the additional duties.

23 (c) The total salaries and benefits of all judges of
24 the commission are to be paid from the trust fund created by
25 s. 440.50. Notwithstanding any other provision of law, the
26 judges shall be paid a salary equal to that paid under state
27 law to the judges of District Courts of Appeal.

28 (d)1. The Workers' Compensation Appeals Commission is
29 vested with all authority, powers, duties, and
30 responsibilities relating to review of orders of judges of
31 compensation claims in workers' compensation proceedings under

1 chapter 440. The commission shall review by appeal final
2 orders of the judges of compensation claims entered pursuant
3 to chapter 440. The First District Court of Appeal shall
4 retain jurisdiction over all workers' compensation proceedings
5 pending before it on October 1, 1998. The commission may hold
6 sessions and conduct hearings at any place within the state.
7 Three judges must consider each case and the concurrence of
8 two is necessary for a decision. Any judge may request an en
9 banc hearing for review of a final order of a judge of
10 compensation claims.

11 2. The Workers' Compensation Appeals Commission is
12 assigned to the Department of Labor and Employment Security
13 for administrative purposes but, in the performance of its
14 powers and duties under chapter 440, is not subject to
15 control, supervision, or direction by the Department of Labor
16 and Employment Security. The commission is not an agency for
17 purposes of chapter 120.

18 3. The property, personnel, and appropriations related
19 to the commission's specified authority, powers, duties, and
20 responsibilities shall be provided to the commission by the
21 Department of Labor and Employment Security.

22 (e) The commission shall make such expenditures,
23 including expenditures for personnel services and rent at the
24 seat of government and elsewhere, for law books, reference
25 materials, periodicals, furniture, equipment, and supplies,
26 and for printing and binding, as is necessary in exercising
27 its authority and powers and carrying out its duties and
28 responsibilities. All expenditures of the commission must be
29 allowed and paid as provided in s. 440.50 upon the
30 presentation of itemized vouchers therefor approved by the
31 presiding judge.

1 (f) The commission may charge, in its discretion, for
2 publications, subscriptions, and copies of records and
3 documents. The fees must be deposited in the fund established
4 in s. 440.50.

5 (g)1. The presiding judge shall exercise
6 administrative supervision over the Workers' Compensation
7 Appeals Commission and over the judges and other officers of
8 such courts.

9 2. The presiding judge of the Workers' Compensation
10 Appeals Commission has the power:

11 a. To assign judges to hear appeals from final orders
12 of judges of compensation claims.

13 b. To hire and assign clerks and staff.

14 c. To regulate use of courtrooms.

15 d. To supervise dockets and calendars.

16 e. To do everything necessary to promote the prompt
17 and efficient administration of justice in the courts over
18 which he or she presides.

19 3. The presiding judge shall be selected by a majority
20 of the judges for a term of 2 years. The presiding judge may
21 succeed himself or herself.

22 4. There may be an executive assistant to the
23 presiding judge to perform such duties as the presiding judge
24 may direct. Additionally, each judge may have research
25 assistants or law clerks.

26 (h)1. The commission shall maintain and keep open
27 during reasonable business hours a clerk's office, in the
28 Capitol or some other suitable building in Leon County, for
29 the transaction of its business. All books, papers, records,
30 files, and the seal of the commission must be kept at this
31

1 office. The office shall be furnished and equipped by the
2 commission.

3 2. The Workers' Compensation Appeals Commission shall
4 appoint a clerk to serve at the pleasure of the commission.
5 The clerk shall give bond in the sum of \$5,000 payable to the
6 Governor or his or her successors in office, to be approved by
7 a majority of the members of the commission, conditioned upon
8 the faithful discharge of the duties of the office, which bond
9 shall be filed in the office of the Secretary of State.

10 3. The clerk shall be paid an annual salary to be
11 determined in accordance with s. 25.302.

12 4. The clerk may employ such deputies and clerical
13 assistants as are necessary. Their number and compensation
14 must be approved by the commission and paid from the annual
15 appropriation for the commission from the Workers'
16 Compensation Administration Trust Fund.

17 5. The clerk, upon the filing of a certified copy of a
18 notice of appeal or petition, shall charge and collect a
19 filing fee of \$250 for each case docketed, and shall charge
20 and collect for copying, certifying, or furnishing opinions,
21 records, papers, or other instruments, and for other services
22 the same service charges as provided in s. 28.24. The state or
23 its agencies, when appearing as appellant or petitioner, is
24 exempt from the filing fee required by this subsection.

25 6. The clerk of the Workers' Compensation Appeals
26 Commission shall prepare a statement of all fees collected in
27 duplicate each month and remit one copy of the statement,
28 together with all fees collected by him or her, to the State
29 Comptroller, who shall place the same to the credit of the
30 Workers' Compensation Administration Trust Fund.

31

1 (i) The commission shall have a seal for
2 authenticating its orders, awards, and proceedings, upon which
3 shall be inscribed the words "State of Florida Workers'
4 Compensation Appeals Commission--Seal", and it shall be
5 judicially noticed.

6 (j) The commission may destroy obsolete records of the
7 commission.

8 (k) Workers' Compensation Appeals Commission judges
9 shall be reimbursed for travel expenses as provided in s.
10 112.061.

11 (l) The practice and procedure before the commission
12 and the judges of compensation claims are governed by rules
13 adopted by the Supreme Court except to the extent that the
14 rules conflict with the provisions of chapter 440.

15 Section 2. Subsections (24) and (34) of section
16 440.02, Florida Statutes, are amended to read:

17 440.02 Definitions.--When used in this chapter, unless
18 the context clearly requires otherwise, the following terms
19 shall have the following meanings:

20 (24) "Wages" means the money rate at which the service
21 rendered is recompensed under the contract of hiring in force
22 at the time of the injury and includes only the wages earned
23 and reported for federal income tax purposes on the job where
24 the employee is injured ~~and any other concurrent employment~~
25 ~~where he or she is also subject to workers' compensation~~
26 ~~coverage and benefits~~, together with the reasonable value of
27 housing furnished to the employee by the employer which is the
28 permanent year-round residence of the employee, and gratuities
29 to the extent reported to the employer in writing as taxable
30 income received in the course of employment from others than
31 the employer and employer contributions for health insurance

1 for the employee or the employee's dependents. However,
2 housing furnished to migrant workers shall be included in
3 wages unless provided after the time of injury. In employment
4 in which an employee receives consideration for housing, the
5 reasonable value of such housing compensation shall be the
6 actual cost to the employer or based upon the Fair Market Rent
7 Survey promulgated pursuant to s. 8 of the Housing and Urban
8 Development Act of 1974, whichever is less. However, if
9 employer contributions for housing or health insurance are
10 continued after the time of the injury, the contributions are
11 not "wages" for the purpose of calculating an employee's
12 average weekly wage.

13 (34) "Catastrophic injury" means a permanent
14 impairment constituted by:

15 (a) Spinal cord injury involving severe paralysis of
16 an arm, a leg, or the trunk;

17 (b) Amputation of an arm, a hand, a foot, or a leg
18 involving the effective loss of use of that appendage;

19 (c) Severe brain or closed-head injury as evidenced
20 by:

21 1. Severe sensory or motor disturbances;

22 2. Severe communication disturbances;

23 3. Severe complex integrated disturbances of cerebral
24 function;

25 4. Severe episodic neurological disorders; or

26 5. Other severe brain and closed-head injury

27 conditions at least as severe in nature as any condition
28 provided in subparagraphs 1.-4.;

29 (d) Second-degree or third-degree burns of 25 percent
30 or more of the total body surface or third-degree burns of 5
31 percent or more to the face and hands; or

1 (e) Total or industrial blindness ~~;~~ or
2 ~~(f) Any other injury that would otherwise qualify~~
3 ~~under this chapter of a nature and severity that would qualify~~
4 ~~an employee to receive disability income benefits under Title~~
5 ~~II or supplemental security income benefits under Title XVI of~~
6 ~~the federal Social Security Act as the Social Security Act~~
7 ~~existed on July 1, 1992, without regard to any time~~
8 ~~limitations provided under that act.~~

9 Section 3. Subsection (3) of section 440.05, Florida
10 Statutes, is amended to read:

11 440.05 Election of exemption; revocation of election;
12 notice; certification.--

13 (3) An officer of a corporation, sole proprietor,
14 independent contractor, or partner engaged in the construction
15 industry is not exempt from coverage under this chapter. ~~Each~~
16 ~~sole proprietor, partner, or officer of a corporation who is~~
17 ~~actively engaged in the construction industry and who elects~~
18 ~~an exemption from this chapter or who, after electing such~~
19 ~~exemption, revokes that exemption, must mail a written notice~~
20 ~~to such effect to the division on a form prescribed by the~~
21 ~~division. The notice of election to be exempt from the~~
22 ~~provisions of this chapter must be notarized and under oath.~~
23 ~~The election must list the name, federal tax identification~~
24 ~~number, social security number, and all certified or~~
25 ~~registered licenses issued pursuant to chapter 489 held by the~~
26 ~~person seeking the exemption. The form must identify each sole~~
27 ~~proprietorship, partnership, or corporation that employs the~~
28 ~~person electing the exemption and must list the social~~
29 ~~security number or federal tax identification number of each~~
30 ~~such employer. In addition, the election form must provide~~
31 ~~that the sole proprietor, partner, or officer electing an~~

1 ~~exemption is not entitled to benefits under this chapter, must~~
2 ~~provide that the election does not exceed exemption limits for~~
3 ~~officers and partnerships provided in s. 440.02, and must~~
4 ~~certify that any employees of the sole proprietor, partner, or~~
5 ~~officer electing an exemption are covered by workers'~~
6 ~~compensation insurance. Upon receipt of the notice of the~~
7 ~~election to be exempt and a determination that the notice~~
8 ~~meets the requirements of this subsection, the division shall~~
9 ~~issue a certification of the election to the sole proprietor,~~
10 ~~partner, or officer. The certificate of election must list the~~
11 ~~names of the sole proprietorship, partnership, or corporation~~
12 ~~listed in the request for exemption. A new certificate of~~
13 ~~election must be obtained each time the person is employed by~~
14 ~~a new sole proprietorship, partnership, or corporation that is~~
15 ~~not listed on the certificate of election. A copy of the~~
16 ~~certificate of election must be sent to each workers'~~
17 ~~compensation carrier identified in the request for exemption.~~
18 ~~The certification of the election is valid until the sole~~
19 ~~proprietor, partner, or officer revokes her or his election.~~
20 ~~Upon filing a notice of revocation of election, a sole~~
21 ~~proprietor, partner, or officer who is a subcontractor must~~
22 ~~notify her or his contractor.~~

23 Section 4. Subsections (1) and (7) of section 440.09,
24 Florida Statutes, are amended to read:

25 440.09 Coverage.--

26 (1) The employer shall pay compensation or furnish
27 benefits required by this chapter if the employee suffers an
28 accidental compensable injury or death arising out of work
29 performed in the course and the scope of employment. The
30 injury, its occupational cause, and any resulting
31 manifestations or disability or impairment shall be

1 established to a reasonable degree of medical certainty and by
2 objective medical findings. Mental or nervous injuries
3 occurring as a manifestation of an injury compensable under
4 this section ~~must shall~~ be demonstrated by clear and
5 convincing evidence, supported by objective medical findings
6 from a division-certified psychiatrist. Compensation is not
7 payable after maximum medical improvement as a result of any
8 impairment rating for psychiatric impairments.

9 (a) This chapter does not require any compensation or
10 benefits for any subsequent injury the employee suffers as a
11 result of an original injury arising out of and in the course
12 of employment unless the original injury is the major
13 contributing cause of the subsequent injury.

14 (b) If an injury arising out of and in the course of
15 employment combines with a preexisting disease or condition to
16 cause or prolong disability or need for treatment, the
17 employer must pay compensation or benefits required by this
18 chapter only to the extent that the injury arising out of and
19 in the course of employment is and remains the major
20 contributing cause of the disability or need for treatment.

21 (c) Death resulting from an operation by a surgeon
22 furnished by the employer for the cure of hernia as required
23 in s. 440.15(6) shall for the purpose of this chapter be
24 considered to be a death resulting from the accident causing
25 the hernia.

26 (d) If an accident happens while the employee is
27 employed elsewhere than in this state, which would entitle the
28 employee or his or her dependents to compensation if it had
29 happened in this state, the employee or his or her dependents
30 are entitled to compensation if the contract of employment was
31 made in this state, or the employment was principally

1 localized in this state. However, if an employee receives
2 compensation or damages under the laws of any other state, the
3 total compensation for the injury may not be greater than is
4 provided in this chapter.

5 (7)(a) To ensure that the workplace is a drug-free
6 environment and to deter the use of drugs and alcohol at the
7 workplace, if the employer has reason to suspect that the
8 injury was occasioned primarily by the intoxication of the
9 employee or by the use of any drug, as defined in this
10 chapter, which affected the employee to the extent that the
11 employee's normal faculties were impaired, and the employer
12 has not implemented a drug-free workplace pursuant to ss.
13 440.101 and 440.102, the employer may require the employee to
14 submit to a test for the presence of any or all drugs or
15 alcohol in his or her system.

16 (b) If the employee has, at the time of the injury, a
17 blood alcohol level equal to or greater than the level
18 specified in s. 316.193, or if the employee has a positive
19 confirmation of a drug as defined in this act, it is presumed
20 that the injury was occasioned primarily by the intoxication
21 of, or by the influence of the drug upon, the employee. With
22 respect to a drug-free workplace program, this presumption may
23 be rebutted by evidence beyond a reasonable doubt that the
24 intoxication or influence of the drug did not contribute to
25 the injury.In the absence of a drug-free workplace program,
26 this presumption may be rebutted by clear and convincing
27 evidence that the intoxication or influence of the drug did
28 not contribute to the injury. Percent by weight of alcohol in
29 the blood must be based upon grams of alcohol per 100
30 milliliters of blood. If the results are positive, the testing
31 facility must maintain the specimen for a minimum of 90 days.

1 Blood serum may be used for testing purposes under this
2 chapter; however, if this test is used, the presumptions under
3 this section do not arise unless the blood alcohol level is
4 proved to be medically and scientifically equivalent to or
5 greater than the comparable blood alcohol level that would
6 have been obtained if the test were based on percent by weight
7 of alcohol in the blood. However, if, before the accident, the
8 employer had actual knowledge of and expressly acquiesced in
9 the employee's presence at the workplace while under the
10 influence of such alcohol or drug, the presumptions specified
11 in this subsection do not apply.

12 (c) If the injured worker refuses to submit to a drug
13 and alcohol test, it shall be presumed in the absence of clear
14 and convincing evidence to the contrary that the injury was
15 occasioned primarily by the influence of drugs or alcohol.

16 (d) The division shall provide by rule for the
17 authorization and regulation of drug-testing policies,
18 procedures, and methods. Testing of injured employees shall
19 not commence until such rules are adopted.

20 Section 5. Subsection (1) of section 440.10, Florida
21 Statutes, is amended to read:

22 440.10 Liability for compensation.--

23 (1)(a) Every employer coming within the provisions of
24 this chapter, including any brought within the chapter by
25 waiver of exclusion or of exemption, shall be liable for, and
26 shall secure, the payment to his or her employees, or any
27 physician, surgeon, or pharmacist providing services under the
28 provisions of s. 440.13, of the compensation payable under ss.
29 440.13, 440.15, and 440.16. Any contractor or subcontractor
30 who engages in any public or private construction in the state
31

1 shall secure and maintain compensation for his or her
2 employees under this chapter as provided in s. 440.38.

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

11 (c) A contractor may require a subcontractor to
12 provide evidence of workers' compensation insurance or a copy
13 of his or her certificate of election. ~~A subcontractor~~
14 ~~electing to be exempt as a sole proprietor, partner, or~~
15 ~~officer of a corporation shall provide a copy of his or her~~
16 ~~certificate of election to the contractor.~~

17 (d)1. If a contractor becomes liable for the payment
18 of compensation to the employees of a subcontractor who has
19 failed to secure such payment in violation of s. 440.38, the
20 contractor or other third-party payor shall be entitled to
21 recover from the subcontractor all benefits paid or payable
22 plus interest unless the contractor and subcontractor have
23 agreed in writing that the contractor will provide coverage.

24 2. If a contractor or third-party payor becomes liable
25 for the payment of compensation to the employee of a
26 subcontractor who is actively engaged in the construction
27 industry ~~and has elected to be exempt from the provisions of~~
28 ~~this chapter, but whose election is invalid, the contractor or~~
29 ~~third-party payor may recover from the independent contractor~~
30 ~~claimant, partnership, or corporation all benefits paid or~~
31 ~~payable plus interest, unless the contractor and the~~

1 subcontractor have agreed in writing that the contractor will
2 provide coverage.

3 (e) A subcontractor is not liable for the payment of
4 compensation to the employees of another subcontractor on such
5 contract work and is not protected by the
6 exclusiveness-of-liability provisions of s. 440.11 from action
7 at law or in admiralty on account of injury of such employee
8 of another subcontractor.

9 (f) If an employer willfully fails to secure
10 compensation as required by this chapter, the division shall
11 ~~may~~ assess against the employer a penalty not to exceed \$5,000
12 for each employee of that employer who is classified by the
13 employer as an independent contractor but who is found by the
14 division or a judge of compensation claims to not meet the
15 criteria for an independent contractor that are set forth in
16 s. 440.02.

17 (g) For purposes of this section, a person is
18 conclusively presumed to be an independent contractor if:

19 1. The independent contractor provides the general
20 contractor with an affidavit stating that he or she meets all
21 the requirements of s. 440.02(13)(d); or ~~and~~

22 2. The independent contractor provides the general
23 contractor with a valid certificate of workers' compensation
24 insurance ~~or a valid certificate of exemption issued by the~~
25 division.

26
27 A sole proprietor, independent contractor, partner, or officer
28 of a corporation who elects exemption from this chapter by
29 filing a certificate of election under s. 440.05 may not
30 recover benefits or compensation under this chapter.

31

1 Section 6. Subsections (1) and (3) of section 440.107,
2 Florida Statutes, are amended to read:

3 440.107 Division powers to enforce employer compliance
4 with coverage requirements.--

5 (1) Whenever the division determines that an employer
6 who is required to secure the payment to his or her employees
7 of the compensation provided for by this chapter has failed to
8 do so, such failure shall be deemed an immediate serious
9 danger to public health, safety, or welfare sufficient to
10 justify service by the division of a stop-work order on the
11 employer, requiring the cessation of all business operations
12 at the place of employment or job site. The order shall take
13 effect upon the date of service upon the employer, unless the
14 employer provides evidence satisfactory to the division of
15 having secured any necessary insurance or self-insurance and
16 pays a civil penalty to the division, to be deposited by the
17 division into the Workers' Compensation Administration Trust
18 Fund, in the amount of \$100 per day for each day the employer
19 was not in compliance with this chapter. If the division does
20 not issue a stop-work order, it shall assess a civil penalty,
21 to be deposited by the division into the Workers' Compensation
22 Administration Trust Fund, in an amount of \$200 per day for
23 each day the employer was not in compliance with this chapter.

24 (3) ~~In addition to any penalty, stop-work order, or~~
25 ~~injunction,~~The division shall ~~may~~ assess against any
26 employer, who has failed to secure any ~~the~~ payment of
27 compensation as required by this chapter, a penalty in the
28 amount of:

29 (a) Three times ~~Twice~~ the amount the employer would
30 have paid during periods it illegally failed to secure payment
31

1 of compensation in the preceding 3-year period based on the
2 employer's payroll during the preceding 3-year period; or

3 (b) One thousand dollars, whichever is greater.
4

5 Any penalty assessed under this subsection is due within 30
6 days after the date on which the employer is notified, except
7 that, if the division has posted a stop-work order or obtained
8 injunctive relief against the employer, payment is due, in
9 addition to those conditions set forth in this section, as a
10 condition to relief from a stop-work order or an injunction.
11 Interest shall accrue on amounts not paid when due at the rate
12 of 1 percent per month.

13 Section 7. Paragraph (f) is added to subsection (2) of
14 section 440.13, Florida Statutes, and paragraph (c) of
15 subsection (4) and subsection (5) of that section are amended,
16 to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

19 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

20 (f) If the employee is not enrolled in a managed-care
21 arrangement and requests alternative medical care, and the
22 request is denied by the carrier, the employee must establish
23 by clear and convincing evidence that the alternative medical
24 care in the same or another specialty is medically necessary.
25 Alternative medical care for employees enrolled in a
26 managed-care arrangement must be provided by the managed-care
27 arrangement.

28 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
29 DIVISION.--

30 (c) It is the policy for the administration of the
31 workers' compensation system that there be reasonable access

1 to medical information by all parties to facilitate the
2 self-executing features of the law. Notwithstanding the
3 limitations in s. 455.241 and subject to the limitations in s.
4 381.004, upon the request of the employer, the carrier, or the
5 attorney for either of them, the medical records of an injured
6 employee must be furnished to those persons and the medical
7 condition of the injured employee must be discussed with those
8 persons, if the records and the discussions are restricted to
9 conditions relating to the workplace injury. Any such
10 discussions may be held before or after the filing of a claim
11 without the knowledge, consent, or presence of any other party
12 or his or her agent or representative. A health care provider
13 who willfully refuses to provide medical records or to discuss
14 the medical condition of the injured employee, after a
15 reasonable request is made for such information pursuant to
16 this subsection, shall be subject by the division to one or
17 more of the penalties set forth in paragraph (8)(b). For
18 purposes of this section, the term "discussion" means the free
19 interchange of ideas, facts, and findings among the parties
20 and health care providers which is designed to aid the parties
21 in reaching conclusions that will enable them to carry out
22 their legal obligations and responsibilities.

23 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

24 (a) In any dispute concerning overutilization, medical
25 benefits, compensability, or disability under this chapter,
26 the carrier or the employee may select an independent medical
27 examiner. The examiner may be a health care provider treating
28 or providing other care to the employee. An independent
29 medical examiner may not render an opinion outside his or her
30 area of expertise, as demonstrated by licensure and applicable
31 practice parameters.

1 (b) Each party is bound by his or her selection of an
2 independent medical examiner and is entitled to an alternate
3 examiner only if:

4 1. The examiner is not qualified to render an opinion
5 upon an aspect of the employee's illness or injury which is
6 material to the claim or petition for benefits;

7 2. The examiner ceases to practice in the specialty
8 relevant to the employee's condition;

9 3. The examiner is unavailable due to injury, death,
10 or relocation outside a reasonably accessible geographic area;
11 or

12 4. The parties agree to an alternate examiner.
13

14 Any party may request, or a judge of compensation claims may
15 require, designation of a division medical advisor as an
16 independent medical examiner. The opinion of the advisors
17 acting as examiners shall not be afforded the presumption set
18 forth in paragraph (9)(c).

19 (c) The carrier may, at its election, contact the
20 claimant directly to schedule a reasonable time for an
21 independent medical examination when the carrier elects to
22 schedule the examination. The carrier must confirm the
23 scheduling agreement in writing within 5 days and notify
24 claimant's counsel, if any, at least 7 days before the date
25 upon which the independent medical examination is scheduled to
26 occur. An attorney representing a claimant is not authorized
27 to schedule independent medical evaluations under this
28 subsection. This section does not prohibit the attorney from
29 scheduling an examination with an independent medical examiner
30 selected by the employee.
31

1 (d) Each party is responsible for any costs incurred
2 for an independent medical examination. An injured employee
3 may recover the costs incurred for the independent medical
4 examination if the injured employee successfully prosecutes a
5 claim against the carrier and the independent medical
6 examination was directly relevant to that successful
7 prosecution.

8 (e)~~(d)~~ If the employee fails to appear for the
9 carrier-requested independent medical examination without good
10 cause and fails to advise the physician at least 24 hours
11 before the scheduled date for the examination that he or she
12 cannot appear, the employee is barred from recovering
13 compensation for any period during which he or she has refused
14 to submit to such examination. Further, the employee shall
15 reimburse the carrier 50 percent of the physician's
16 cancellation or no-show fee for the carrier-requested
17 independent medical examination unless the carrier that
18 schedules the examination fails to timely provide to the
19 employee a written confirmation of the date of the examination
20 pursuant to paragraph (c) which includes an explanation of why
21 he or she failed to appear. The employee may appeal to a judge
22 of compensation claims for reimbursement when the carrier
23 withholds payment in excess of the authority granted by this
24 section.

25 (f)~~(e)~~ No medical opinion other than the opinion of a
26 medical advisor appointed by the judge of compensation claims
27 or division, an independent medical examiner, or an authorized
28 treating provider is admissible in proceedings before the
29 judges of compensation claims.

30 (g)~~(f)~~ Attorney's fees incurred by an injured employee
31 in connection with delay of or opposition to an independent

1 medical examination, including, but not limited to, motions
2 for protective orders, are not recoverable under this chapter.

3 Section 8. Subsections (1), (2), (10), (15), and (18)
4 of section 440.134, are amended to read:

5 440.134 Workers' compensation managed care
6 arrangement.--

7 (1) As used in this section, the term:

8 (a) "Agency" means the Agency for Health Care
9 Administration.

10 (b) "Complaint" means any dissatisfaction expressed by
11 an injured worker concerning an insurer's workers'
12 compensation managed care arrangement.

13 (c) "Emergency care" means medical services as defined
14 in chapter 395.

15 (d) "Grievance" means dissatisfaction with the medical
16 care provided by an insurer's workers' compensation managed
17 care arrangement health care providers, expressed in writing
18 by an injured worker.

19 (e) "Informal grievance" means a verbal complaint,
20 expressed by the injured employee or provider, of
21 dissatisfaction with care, services, or benefits and addressed
22 immediately through telephonic or personal interaction at the
23 time the complaint is made known.

24 (f) "Formal grievance" means a written expression of
25 dissatisfaction with care, services, or benefits received
26 which is submitted by a provider or injured employee, or on
27 the employee's behalf by an agent or a provider.

28 (g)~~(e)~~ "Insurer" means an insurance carrier,
29 self-insurance fund, assessable mutual insurer, or
30 individually self-insured employer.

31

1 ~~(h)(f)~~ "Service area" means the agency-approved
2 geographic area within which an insurer is authorized to offer
3 a workers' compensation managed care arrangement.

4 (i) "Certified case manager" means an individual who
5 is responsible for timely coordinating quality health care
6 services to meet an individual's specific health care needs in
7 a cost-effective manner. The division shall adopt by rule the
8 minimum qualifications for designation as a certified case
9 manager. Until the division adopts its rules, a registered
10 nurse licensed under chapter 464 or a graduate of a medical
11 school accredited by the American Medical Association who has
12 had at least 1 year of experience as a case manager in
13 workers' compensation or a similar environment is qualified to
14 perform the duties of a certified case manager.

15 ~~(j)(g)~~ "Workers' compensation managed care
16 arrangement" means an arrangement under which a provider of
17 health care, a health care facility, a group of providers of
18 health care, a group of providers of health care and health
19 care facilities, an insurer that has an exclusive provider
20 organization approved under s. 627.6472 or a health
21 maintenance organization licensed under part I of chapter 641
22 has entered into a written agreement directly or indirectly
23 with an insurer to provide and to manage appropriate remedial
24 treatment, care, and attendance to injured workers in
25 accordance with this chapter.

26 ~~(k)(h)~~ "Capitated contract" means a contract in which
27 an insurer pays directly or indirectly a fixed amount to a
28 health care provider in exchange for the future rendering of
29 medical services for covered expenses.

30 (l)(i) "Medical care coordinator" means a primary care
31 provider within a provider network who is responsible for

1 managing the medical care of an injured worker including
2 determining other health care providers and health care
3 facilities to which the injured employee will be referred for
4 evaluation or treatment. A medical care coordinator shall be a
5 physician licensed under chapter 458 or an osteopathic
6 physician licensed under chapter 459.

7 (m)~~(j)~~ "Provider network" means a comprehensive panel
8 of health care providers and health care facilities who have
9 contracted directly or indirectly with an insurer to provide
10 appropriate remedial treatment, care, and attendance to
11 injured workers in accordance with this chapter.

12 (n)~~(k)~~ "Primary care provider" means, except in the
13 case of emergency treatment, the initial treating physician
14 and, when appropriate, continuing treating physician, who may
15 be a family practitioner, general practitioner, or internist
16 physician licensed under chapter 458; a family practitioner,
17 general practitioner, or internist osteopathic physician
18 licensed under chapter 459; a chiropractor licensed under
19 chapter 460; a podiatrist licensed under chapter 461; an
20 optometrist licensed under chapter 463; or a dentist licensed
21 under chapter 466.

22 (2)(a) The agency shall, beginning April 1, 1994,
23 authorize an insurer to offer or utilize a workers'
24 compensation managed care arrangement after the insurer files
25 a completed application along with the payment of a \$1,000
26 application fee, and upon the agency's being satisfied that
27 the applicant has the ability to provide quality of care
28 consistent with the prevailing professional standards of care
29 and the insurer and its workers' compensation managed care
30 arrangement otherwise meets the requirements of this section.
31 Effective April 1, 1994, no insurer may offer or utilize a

1 managed care arrangement without such authorization. The
2 authorization, unless sooner suspended or revoked, shall
3 automatically expire 2 years after the date of issuance unless
4 renewed by the insurer. The authorization shall be renewed
5 upon application for renewal and payment of a renewal fee of
6 \$1,000, provided that the insurer is in compliance with the
7 requirements of this section and any rules adopted hereunder.
8 An application for renewal of the authorization shall be made
9 90 days prior to expiration of the authorization, on forms
10 provided by the agency. The renewal application shall not
11 require the resubmission of any documents previously filed
12 with the agency if such documents have remained valid and
13 unchanged since their original filing.

14 (b) Effective January 1, 1997, the employer shall,
15 subject to the limitations specified elsewhere in this
16 chapter, furnish to the employee solely through managed care
17 arrangements such medically necessary remedial treatment,
18 care, and attendance for such period as the nature of the
19 injury or the process of recovery requires. However, employers
20 who self-insure under s. 440.38 may opt out of the mandatory
21 managed-care arrangements and this section by providing such
22 medically necessary remedial treatment, care, and attendance
23 for such periods as the nature of the injury or process of
24 recovery requires, as specified in s. 440.13. This section may
25 not be construed to prevent an employer who has self-insured
26 under s. 440.38 from choosing to use managed-care arrangements
27 to provide treatment to its employees.

28 (10) Written procedures and methods for the management
29 of an injured worker's medical care by a medical care
30 coordinator or certified case manager, including:
31

1 (a) The mechanism for assuring that covered employees
2 receive all initial covered services from a primary care
3 provider participating in the provider network, except for
4 emergency care.

5 (b) The mechanism for assuring that all continuing
6 covered services be received from the same primary care
7 provider participating in the provider network that provided
8 the initial covered services, except when services from
9 another provider are authorized by the medical care
10 coordinator or certified case manager, pursuant to paragraph

11 (d).

12 (c) The policies and procedures for allowing an
13 employee one change to another provider within the same
14 specialty and provider network as the authorized treating
15 physician during the course of treatment for a work-related
16 injury, if a request is made to the medical care coordinator
17 or certified case manager by the employee; and requiring that
18 special provision be made for more than one such referral
19 through the arrangement's grievance procedures.

20 (d) The process for assuring that all referrals
21 authorized by a medical care coordinator or certified case
22 manager are made to the participating network providers,
23 unless medically necessary treatment, care, and attendance are
24 not available and accessible to the injured worker in the
25 provider network.

26 (15)(a) A workers' compensation managed care
27 arrangement must have and use procedures for hearing
28 complaints and resolving written grievances from injured
29 workers and health care providers. The procedures must be
30 aimed at mutual agreement for settlement and may include

31

1 arbitration procedures. Procedures provided herein are in
2 addition to other procedures contained in this chapter.

3 (b) The grievance procedure must be described in
4 writing and provided to the affected workers and health care
5 providers.

6 (c) Informal grievances must be initiated and
7 concluded within 7 calendar days unless the parties and the
8 managed-care arrangement mutually agree to an extension. The 7
9 days commence upon telephonic or personal contact by the
10 employee, the provider, the agency, or the division. If the
11 informal grievance remains unresolved, the managed-care
12 arrangement must notify the party of the result in writing and
13 advise the party of his or her rights to institute formal
14 grievance. The written notification must include the name,
15 address, and telephone number of the contact person
16 responsible for instituting the formal grievance. The
17 managed-care arrangement must also advise the employee to
18 contact the employee assistance office for additional
19 information concerning his or her rights and responsibilities
20 and the dispute-resolution process under the Florida Workers'
21 Compensation Law.

22 (d) In order to ensure that there are no undue delays
23 in the dispute-resolution process, the managed-care grievance
24 coordinator shall, within 3 business days, forward a copy of
25 the formal grievance to the division's employee assistance
26 office. Formal grievances must be initiated and concluded
27 within 30 days after receipt by the managed-care arrangement
28 unless the employee or provider and the managed-care
29 arrangement mutually agree to an extension. If the grievance
30 involves the collection of information outside the service
31 area, the managed-care arrangement has an additional 15

1 calendar days to process the formal grievance. The
2 managed-care arrangement shall notify the employee in writing
3 that additional information is required to complete review of
4 the grievance and that a maximum of 45 days will be allowed
5 for this review. Within 5 business days, the managed-care
6 arrangement shall notify the party of these requirements in
7 writing.

8 (e) The managed-care arrangement shall provide written
9 notice to its employees and providers of the right to proceed
10 under s. 440.191 with the Department of Labor and Employment
11 Security, Division of Workers' Compensation, upon completion
12 of the formal grievance procedure if the issues are not
13 resolved. The managed-care arrangement must furnish a copy of
14 the final decision letter from the managed-care arrangement
15 regarding the grievance to the employer, the carrier, and the
16 Division of Workers' Compensation upon request.

17 (f)(c) At the time the workers' compensation managed
18 care arrangement is implemented, the insurer must provide
19 detailed information to workers and health care providers
20 describing how a grievance may be registered with the insurer.

21 (g)(d) Grievances must be considered in a timely
22 manner and must be transmitted to appropriate decisionmakers
23 who have the authority to fully investigate the issue and take
24 corrective action.

25 (h)(e) If a grievance is found to be valid, corrective
26 action must be taken promptly.

27 (i)(f) All concerned parties must be notified of the
28 results of a grievance.

29 (j)(g) The insurer must report annually, no later than
30 March 31, to the agency regarding its grievance procedure
31 activities for the prior calendar year. The report must be in

1 a format prescribed by the agency and must contain the number
2 of grievances filed in the past year and a summary of the
3 subject, nature, and resolution of such grievances.

4 (18) The agency may suspend the authority of an
5 insurer to offer a workers' compensation managed care
6 arrangement or order compliance within 60 days, if it finds
7 that:

8 (a) The insurer is in substantial violation of its
9 contracts;

10 (b) The insurer is unable to fulfill its obligations
11 under outstanding contracts entered into with its employers;

12 (c) The insurer knowingly utilizes a provider who is
13 furnishing or has furnished health care services and who does
14 not have an existing license or other authority to practice or
15 furnish health care services in this state;

16 (d) The insurer no longer meets the requirements for
17 the authorization as originally issued; or

18 (e) The insurer has violated any lawful rule or order
19 of the agency or any provision of this section.

20 (f) Injuries that require medical treatment for which
21 charges will be incurred whether or not they are reported to
22 the carrier but which do not disable the employee for more
23 than 7 days as a result of the injury may not be used by the
24 Agency for Health Care Administration in determining insurer
25 compliance with this section.

26 Section 9. Section 440.14, Florida Statutes, is
27 amended to read:

28 440.14 Determination of pay.--

29 (1) Except as otherwise provided in this chapter, the
30 average weekly wages of the injured employee at the time of
31 the injury shall be taken as the basis upon which to compute

1 compensation and shall be determined, subject to the
2 limitations of s. 440.12(2), as follows:

3 (a) If the injured employee has been employed
4 full-time or part-time by the employer for at least 13
5 consecutive weeks immediately preceding the date of the injury
6 ~~worked in the employment in which she or he was working at the~~
7 ~~time of the injury, whether for the same or another employer,~~
8 ~~during substantially the whole of 13 weeks immediately~~
9 ~~preceding the injury, her or his average weekly wage shall be~~
10 one-thirteenth of the total amount of wages earned in such
11 employment during the 13 weeks. ~~As used in this paragraph,~~
12 ~~the term "substantially the whole of 13 weeks" shall be deemed~~
13 ~~to mean and refer to a constructive period of 13 weeks as a~~
14 ~~whole, which shall be defined as a consecutive period of 91~~
15 ~~days, and the term "during substantially the whole of 13~~
16 ~~weeks" shall be deemed to mean during not less than 90 percent~~
17 ~~of the total customary full-time hours of employment within~~
18 ~~such period considered as a whole.~~

19 (b) If the injured employee has not worked in such
20 employment during ~~substantially the whole of 13~~ consecutive
21 weeks immediately preceding the injury, the wages of a similar
22 employee in the same employment who has worked substantially
23 ~~the whole of such~~ 13 consecutive weeks shall be used in making
24 the determination under the preceding paragraph.

25 (c) If an employee is a seasonal worker and the
26 foregoing method cannot be fairly applied in determining the
27 average weekly wage, then the employee may use, instead of the
28 13 weeks immediately preceding the injury, the calendar year
29 or the 52 weeks immediately preceding the injury. The employee
30 will have the burden of proving that this method will be more
31 reasonable and fairer than the method set forth in paragraphs

1 (a) and (b) and, further, must document prior earnings with
2 W-2 forms, written wage statements, or income tax returns. The
3 employer shall have 30 days following the receipt of this
4 written proof to adjust the compensation rate, including the
5 making of any additional payment due for prior weekly
6 payments, based on the lower rate compensation.

7 (d) If any of the foregoing methods cannot reasonably
8 and fairly be applied, the full-time weekly wages of the
9 injured employee shall be used, except as otherwise provided
10 in paragraph (e) ~~or paragraph (f)~~.

11 (e) If it is established that the injured employee was
12 under 22 years of age when injured and that under normal
13 conditions her or his wages should be expected to increase
14 during the period of disability, the fact may be considered in
15 arriving at her or his average weekly wages.

16 ~~(f) If it established that the injured employee was a
17 part-time worker at the time of the injury, that she or he had
18 adopted part-time employment as a customary practice, and that
19 under normal working conditions she or he probably would have
20 remained a part-time worker during the period of disability,
21 these factors shall be considered in arriving at her or his
22 average weekly wages. For the purpose of this paragraph, the
23 term "part-time worker" means an individual who customarily
24 works less than the full-time hours or full-time workweek of a
25 similar employee in the same employment.~~

26 (f)~~(g)~~ If compensation is due for a fractional part of
27 the week, the compensation for such fractional part shall be
28 determined by dividing the weekly compensation rate by the
29 number of days employed per week to compute the amount due for
30 each day.

31

1 (g) Any issue relating to the average weekly wage is
2 not subject to attorney's fees. If an attorney is necessary,
3 the employee shall be represented by an attorney as set forth
4 in s. 440.191(1)(e).

5 (2) If the employee's employment has been irregular or
6 if the employee has lost time from work immediately preceding
7 the injury because of illness, bad weather, or another cause
8 beyond the control of the employee, the actual wages earned
9 must be used.

10 (3)~~(2)~~ If, during the period of disability, the
11 employer continues to provide consideration, including board,
12 rent, housing, or lodging, the value of such consideration
13 shall be deducted when calculating the average weekly wage of
14 the employee so long as these benefits continue to be
15 provided.

16 (4)~~(3)~~ The division shall establish by rule a form
17 which shall contain a simplified checklist of those items
18 which may be included as "wage" for determining the average
19 weekly wage.

20 (5)~~(4)~~ Upon termination of the employee or upon
21 termination of the payment of fringe benefits of any employee
22 who is collecting indemnity benefits pursuant to s. 440.15(2)
23 or (3)(b), the employer shall within 7 days of such
24 termination file a corrected 13-week wage statement reflecting
25 the wages paid and the fringe benefits that had been paid to
26 the injured employee as defined in s. 440.02(24).

27 Section 10. Paragraphs (b) and (d) of subsection (1),
28 paragraph (a) of subsection (2), subsections (3) and (4), and
29 paragraph (a) of subsection (10) of section 440.15, Florida
30 Statutes, are amended to read:

31

1 440.15 Compensation for disability.--Compensation for
2 disability shall be paid to the employee, subject to the
3 limits provided in s. 440.12(2), as follows:

4 (1) PERMANENT TOTAL DISABILITY.--

5 (b) Only a catastrophic injury as defined in s. 440.02
6 shall, in the absence of conclusive proof of a substantial
7 earning capacity, constitute permanent total disability. Only
8 claimants with catastrophic injuries are eligible for
9 permanent total benefits. Any other compensable injury must be
10 of a nature and severity that prevents the employee from being
11 able to perform his or her prior work or any work commonly
12 available within the national economy. If the employee is
13 engaged in or is physically capable of engaging in any gainful
14 employment, including sheltered employment, the employee is
15 not entitled to permanent total disability. The burden is on
16 the employee to establish that he or she is unable to perform,
17 due to physical limitations, even part-time sedentary work
18 available within a 100-mile radius of the employee's
19 residence.In no other case may permanent total disability be
20 awarded.

21 (d)

22 1. If an employee who is being paid compensation for
23 permanent total disability becomes rehabilitated to the extent
24 that she or he establishes an earning capacity, the employee
25 shall be paid, instead of the compensation provided in
26 paragraph (a), benefits pursuant to subsection (3). The
27 division shall adopt rules to enable a permanently and totally
28 disabled employee who may have reestablished an earning
29 capacity to undertake a trial period of reemployment without
30 prejudicing her or his return to permanent total status in the
31

1 case that such employee is unable to sustain an earning
2 capacity.

3 2. Entitlement to permanent total disability payments
4 ceases at age 70.

5 (2) TEMPORARY TOTAL DISABILITY.--

6 (a) In case of disability total in character but
7 temporary in quality, 66 2/3 percent of the average weekly
8 wages shall be paid to the employee during the continuance
9 thereof, not to exceed 200 ~~104~~ weeks, including temporary
10 partial wage-loss benefits, except as provided in this
11 subsection, s. 440.12(1), and s. 440.14(3). Once the employee
12 reaches the maximum number of weeks allowed, or the employee
13 reaches the date of maximum medical improvement, whichever
14 occurs earlier, temporary disability benefits shall cease and
15 the injured worker's permanent impairment shall be determined.

16 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

17 (a) Impairment benefits.--

18 1. In case of permanent impairment due to amputation;
19 loss of 80 percent or more of the vision in either eye, after
20 correction; or serious facial or head disfigurement resulting
21 from an injury other than an injury entitling the injured
22 worker to permanent total disability benefits pursuant to
23 subsection (1), there shall be paid to the injured worker the
24 following:

25 a. Two hundred and fifty dollars for each percent of
26 permanent impairment of the body as a whole, from 1 percent
27 through 10 percent; and

28 b. Five hundred dollars for each percent of permanent
29 impairment of the body as a whole for that portion in excess
30 of 10 percent.

31

1 ~~2.1.~~ Once the employee has reached the date of maximum
2 medical improvement, impairment benefits are due and payable
3 within 20 days after the carrier has knowledge of the
4 impairment.

5 ~~3.2.~~ The three-member panel, in cooperation with the
6 division, shall establish and use a uniform permanent
7 impairment rating schedule. This schedule must be based on
8 medically or scientifically demonstrable findings as well as
9 the systems and criteria set forth in the American Medical
10 Association's Guides to the Evaluation of Permanent
11 Impairment; the Snellen Charts, published by American Medical
12 Association Committee for Eye Injuries; and the Minnesota
13 Department of Labor and Industry Disability Schedules. The
14 schedule should be based upon objective findings. The schedule
15 shall be more comprehensive than the AMA Guides to the
16 Evaluation of Permanent Impairment and shall expand the areas
17 already addressed and address additional areas not currently
18 contained in the guides. On August 1, 1979, and pending the
19 adoption, by rule, of a permanent schedule, Guides to the
20 Evaluation of Permanent Impairment, copyright 1977, 1971,
21 1988, by the American Medical Association, shall be the
22 temporary schedule and shall be used for the purposes hereof.
23 For injuries after July 1, 1990, pending the adoption by
24 division rule of a uniform disability rating schedule, the
25 Minnesota Department of Labor and Industry Disability Schedule
26 shall be used unless that schedule does not address an injury.
27 In such case, the Guides to the Evaluation of Permanent
28 Impairment by the American Medical Association shall be used.
29 Determination of permanent impairment under this schedule must
30 be made by a physician licensed under chapter 458, a doctor of
31 osteopathic medicine licensed under chapters 458 and 459, a

1 chiropractor licensed under chapter 460, a podiatrist licensed
2 under chapter 461, an optometrist licensed under chapter 463,
3 or a dentist licensed under chapter 466, as appropriate
4 considering the nature of the injury. No other persons are
5 authorized to render opinions regarding the existence of or
6 the extent of permanent impairment.

7 ~~3. All impairment income benefits shall be based on an~~
8 ~~impairment rating using the impairment schedule referred to in~~
9 ~~subparagraph 2. Impairment income benefits are paid weekly at~~
10 ~~the rate of 50 percent of the employee's average weekly~~
11 ~~temporary total disability benefit not to exceed the maximum~~
12 ~~weekly benefit under s. 440.12. An employee's entitlement to~~
13 ~~impairment income benefits begins the day after the employee~~
14 ~~reaches maximum medical improvement or the expiration of~~
15 ~~temporary benefits, whichever occurs earlier, and continues~~
16 ~~until the earlier of:~~

17 ~~a. The expiration of a period computed at the rate of~~
18 ~~3 weeks for each percentage point of impairment; or~~

19 ~~b. The death of the employee.~~

20 4. After the employee has been certified by a doctor
21 as having reached maximum medical improvement or 6 weeks
22 before the expiration of temporary benefits, whichever occurs
23 earlier, the certifying doctor shall evaluate the condition of
24 the employee and assign an impairment rating, using the
25 impairment schedule referred to in subparagraph 2.

26 Compensation is not payable for the mental, psychological, or
27 emotional injury arising out of depression from being out of
28 work. If the certification and evaluation are performed by a
29 doctor other than the employee's treating doctor, the
30 certification and evaluation must be submitted to the treating
31 doctor, and the treating doctor must indicate agreement or

1 | disagreement with the certification and evaluation. The
2 | certifying doctor shall issue a written report to the
3 | division, the employee, and the carrier certifying that
4 | maximum medical improvement has been reached, stating the
5 | impairment rating, and providing any other information
6 | required by the division. ~~If the employee has not been~~
7 | ~~certified as having reached maximum medical improvement before~~
8 | ~~the expiration of 102 weeks after the date temporary total~~
9 | ~~disability benefits begin to accrue, the carrier shall notify~~
10 | ~~the treating doctor of the requirements of this section.~~

11 | ~~5. The carrier shall pay the employee impairment~~
12 | ~~income benefits for a period based on the impairment rating.~~

13 | ~~(b) Supplemental benefits.--~~

14 | ~~1. All supplemental benefits must be paid in~~
15 | ~~accordance with this subsection. An employee is entitled to~~
16 | ~~supplemental benefits as provided in this paragraph as of the~~
17 | ~~expiration of the impairment period, if:~~

18 | ~~a. The employee has an impairment rating from the~~
19 | ~~compensable injury of 20 percent or more as determined~~
20 | ~~pursuant to this chapter;~~

21 | ~~b. The employee has not returned to work or has~~
22 | ~~returned to work earning less than 80 percent of the~~
23 | ~~employee's average weekly wage as a direct result of the~~
24 | ~~employee's impairment; and~~

25 | ~~c. The employee has in good faith attempted to obtain~~
26 | ~~employment commensurate with the employee's ability to work.~~

27 | ~~2. If an employee is not entitled to supplemental~~
28 | ~~benefits at the time of payment of the final weekly impairment~~
29 | ~~income benefit because the employee is earning at least 80~~
30 | ~~percent of the employee's average weekly wage, the employee~~
31 | ~~may become entitled to supplemental benefits at any time~~

1 ~~within 1 year after the impairment income benefit period ends~~
2 ~~if:~~

3 ~~a. The employee earns wages that are less than 80~~
4 ~~percent of the employee's average weekly wage for a period of~~
5 ~~at least 90 days;~~

6 ~~b. The employee meets the other requirements of~~
7 ~~subparagraph 1.; and~~

8 ~~c. The employee's decrease in earnings is a direct~~
9 ~~result of the employee's impairment from the compensable~~
10 ~~injury.~~

11 ~~3. If an employee earns wages that are at least 80~~
12 ~~percent of the employee's average weekly wage for a period of~~
13 ~~at least 90 days during which the employee is receiving~~
14 ~~supplemental benefits, the employee ceases to be entitled to~~
15 ~~supplemental benefits for the filing period. Supplemental~~
16 ~~benefits that have been terminated shall be reinstated when~~
17 ~~the employee satisfies the conditions enumerated in~~
18 ~~subparagraph 2. and files the statement required under~~
19 ~~subparagraph 5. Notwithstanding any other provision, if an~~
20 ~~employee is not entitled to supplemental benefits for 12~~
21 ~~consecutive months, the employee ceases to be entitled to any~~
22 ~~additional income benefits for the compensable injury. If the~~
23 ~~employee is discharged within 12 months after losing~~
24 ~~entitlement under this subsection, benefits may be reinstated~~
25 ~~if the employee was discharged at that time with the intent to~~
26 ~~deprive the employee of supplemental benefits.~~

27 ~~5.4. During the period that wage-loss impairment~~
28 ~~income benefits or supplemental income benefits are being~~
29 ~~paid, the carrier has the affirmative duty to determine at~~
30 ~~least annually whether any extended unemployment or~~
31 ~~underemployment is a direct result of the employee's~~

1 impairment. To accomplish this purpose, the division may
2 require periodic reports from the employee and the carrier,
3 and it may, at the carrier's expense, require any physical or
4 other examinations, vocational assessments, or other tests or
5 diagnoses necessary to verify that the carrier is performing
6 its duty. Not more than once in each 12 calendar months, the
7 employee and the carrier may each request that the division
8 review the status of the employee and determine whether the
9 carrier has performed its duty with respect to whether the
10 employee's unemployment or underemployment is a direct result
11 of impairment from the compensable injury.

12 (b) Wage-loss benefits.--

13 1. Each injured worker who suffers a permanent
14 impairment, which permanent impairment is determined, pursuant
15 to the schedule adopted in accordance with subparagraph (a)3.,
16 not to be based solely on subjective complaints, and which
17 results in one or more work-related physical restrictions that
18 are directly attributable to the injury, may be entitled to
19 wage-loss benefits under this subsection if the permanent
20 impairment results in a work-related physical restriction that
21 affects the employee's ability to perform the activities of
22 his or her usual or other appropriate employment. The benefits
23 must be based on actual wage loss and are not subject to the
24 minimum compensation rate set forth in s. 440.12(2). Subject
25 to the maximum compensation rate as set forth in s. 440.12(2),
26 the wage-loss benefits must be equal to 80 percent of the
27 difference between 80 percent of the employee's average weekly
28 wage and the salary, wages, and other remuneration the
29 employee is able to earn after reaching maximum medical
30 improvement, as compared weekly; however, the weekly wage-loss
31 benefits may not exceed an amount equal to 66 2/3 percent of

1 the employee's average weekly wage at the time of injury. In
2 determining the amount the employee is able to earn in any
3 month after injury, commissions and similar irregular payments
4 must be allocated first to the week in which they are
5 received, in an amount that when added to other earnings for
6 that week does not exceed the employee's average weekly wage,
7 and the balance in the same manner to the subsequent weeks
8 until fully allocated, but not to exceed 52 weeks from the
9 week that the commission or a similar irregular payment was
10 received.

11 2. The amount determined to be the salary, wages, and
12 other remunerations the employee is able to earn after
13 reaching the date of maximum medical improvement may in no
14 case be less than the sum actually being earned by the
15 employee, including earnings from sheltered employment. In the
16 case of an employee who has not voluntarily limited his or her
17 income or who has not failed to accept employment commensurate
18 with the employee's abilities or who was not terminated from
19 employment due to the employee's own misconduct, and who has
20 made a good-faith attempt to find employment where employment
21 actually exists after attaining maximum medical improvement,
22 but who remains unemployed, it is presumed that the salary,
23 wages, and other remuneration the employee is able to earn was
24 zero for each week that the employee made a good-faith attempt
25 to find employment within the employee's physical and
26 vocational capabilities. Wage-loss forms and job-search
27 reports are to be mailed to the employer, carrier, or
28 servicing agent within 14 days after the time benefits are
29 due. Failure of an employee to timely request benefits and
30 file the appropriate job-search forms showing that the
31 employee has looked for a minimum of five jobs where

1 employment was actually available in each biweekly period
2 after the employee has had knowledge that a job search is
3 required, whether the employee has been advised by the
4 employer, the carrier, the servicing agent, or the employee's
5 attorney, results in benefits not being payable during the
6 time that the employee fails to timely file a request for
7 wage-loss forms and job-search reports. However, beginning the
8 13th week after the employee has attained maximum medical
9 improvement, if an employee does not obtain and maintain
10 employment, the employer may show that the salary, wages, and
11 other remuneration the employee is able to earn is greater
12 than zero by proving the existence of actual openings for jobs
13 within a reasonable geographical area which the employee is
14 physically and vocationally capable of performing, in which
15 case the amount the employee is able to earn may be deemed to
16 be the amount that the employee could earn in such jobs. The
17 amount so deemed must be applied against the next 3 biweekly
18 payments.

19 3. An injured worker requesting wage-loss benefits for
20 any period during which the injured worker was unemployed
21 shall have a duty to make reasonable and good-faith efforts to
22 obtain suitable gainful employment where employment actually
23 exists on a consistent basis. As used in this subsection, the
24 term "suitable gainful employment" means employment that is
25 reasonably attainable in light of the individual's age,
26 education, personal aptitudes, previous vocational experience,
27 and physical abilities. For any period, the employer may
28 require the injured worker's request for wage-loss benefits to
29 include verification of the injured worker's efforts to obtain
30 suitable gainful employment, which verification must be made
31 on forms prescribed by the division. In determining whether

1 the injured worker has made reasonable and good-faith efforts
2 to obtain suitable gainful employment, the judge of
3 compensation claims shall consider the availability of
4 suitable employment in the area of the injured worker's
5 residence and the effect of the injured worker's physical
6 impairment upon the injured worker's ability to conduct
7 job-search activities. Whenever a wage-loss benefit may be
8 payable, the burden is on the employee to establish that any
9 wage-loss claimed is the result of the compensable injury. It
10 is also the burden of the employee to show that the inability
11 to obtain employment or to earn as much as was earned at the
12 time of the industrial accident is due to physical limitation
13 related to the accident and not because of economic conditions
14 or the unavailability of employment or the employee's own
15 misconduct. Unless otherwise provided under this section, an
16 injured worker requesting wage-loss benefits for any period
17 during which he or she is unemployed is not entitled to
18 benefits if the injured worker failed or refused to make
19 reasonable and good-faith efforts to obtain suitable gainful
20 employment during the period.

21 4. The right to wage-loss benefits terminates upon the
22 occurrence of the earliest of the following:

23 a. As of the end of a 1-year period commencing at any
24 time subsequent to the month when the injured employee reaches
25 the date of maximum medical improvement, unless during the
26 1-year period wage-loss benefits were payable during at least
27 3 consecutive months. This limitation period is not tolled or
28 extended by the incarceration of the employee or by virtue of
29 the employee becoming an inmate of a penal institution.

30
31

1 b. For injuries occurring on or before July 1, 1980,
2 350 weeks after the injured employee reaches the date of
3 maximum medical improvement.

4 c. For injuries occurring after July 1, 1980, but
5 before July 1, 1990, 525 weeks after the injured employee
6 reaches maximum medical improvement.

7 d. For injuries occurring after June 30, 1997, the
8 employee's eligibility for wage-loss benefits must be
9 determined according to the following schedule:

10 (I) Twenty-six weeks of eligibility for permanent
11 impairment ratings up to and including 3 percent;

12 (II) Fifty-two weeks of eligibility for permanent
13 impairment ratings greater than 3 and up to and including 6
14 percent;

15 (III) Seventy-eight weeks of eligibility for permanent
16 impairment ratings greater than 6 and up to and including 9
17 percent;

18 (IV) One hundred and four weeks of eligibility for
19 permanent impairment ratings greater than 9 and up to and
20 including 12 percent; and

21 (V) One hundred and twenty weeks of eligibility for
22 permanent impairment ratings greater than 12 percent and up to
23 and including 15 percent; 140 weeks of eligibility for
24 permanent impairment ratings greater than 15 percent and up to
25 and including 18 percent; 180 weeks of eligibility for
26 permanent impairment ratings greater than 18 and up to and
27 including 21 percent; 190 weeks of eligibility for permanent
28 impairment ratings greater than 21 percent and up to and
29 including 24 percent; and 200 weeks of eligibility for
30 permanent impairment ratings greater than 24 percent.

31

1 5. Notwithstanding subparagraph 4., the right to
2 wage-loss benefits terminates if there are three occurrences
3 of any of the following incidents:

4 a. The employee voluntarily terminates his employment
5 for any reason unrelated to his compensable injury.

6 b. The employee refuses an offer of suitable or
7 reasonable employment within his restrictions and abilities.

8 c. The employee is terminated from employment due to
9 his own misconduct as defined in s. 440.02(16).

10 d. The employee voluntarily limits his income.

11
12 Each of the three occurrences must be in a different biweekly
13 period. Additionally, for each of the above occurrences, the
14 employee may be disqualified from receiving wage-loss benefits
15 for 3 biweekly periods.

16 6. The right to wage-loss benefits terminates if an
17 employee is convicted of conduct punishable under s. 775.082
18 or s. 775.083 or is subjected to imprisonment under chapter
19 316 which directly affects the employee's ability to perform
20 the activities of his usual or other appropriate employment.
21 For purposes of this subparagraph, the term "convicted" means
22 an adjudication of guilt by a court of competent jurisdiction;
23 a plea of guilty or of nolo contendere; or a jury verdict of
24 guilty when adjudication of guilt is withheld and the accused
25 is placed on probation.

26 7. The right to wage-loss share terminates at age 70.

27 8. Wage-loss benefits are not payable to illegal
28 aliens or to an employee who does not have the documents
29 required to work in the United States.

30 9. If an employee is entitled to both wage-loss
31 benefits and social security retirement benefits under 42

1 U.S.C. ss. 402 and 405, the social security retirement
2 benefits and social security disability benefits under 42
3 U.S.C. s. 423 are primary and the wage-loss benefits are
4 supplemental only. The sum of the two benefits may not exceed
5 the amount of wage-loss benefits which would otherwise be
6 payable. For the purpose of termination of wage-loss benefits
7 pursuant to sub-subparagraph 4.a., the term "payable" includes
8 payment of social security retirement benefits in lieu of
9 wage-loss benefits.

10 ~~5. After the initial determination of supplemental~~
11 ~~benefits, the employee must file a statement with the carrier~~
12 ~~stating that the employee has earned less than 80 percent of~~
13 ~~the employee's average weekly wage as a direct result of the~~
14 ~~employee's impairment, stating the amount of wages the~~
15 ~~employee earned in the filing period, and stating that the~~
16 ~~employee has in good faith sought employment commensurate with~~
17 ~~the employee's ability to work. The statement must be filed~~
18 ~~quarterly on a form and in the manner prescribed by the~~
19 ~~division. The division may modify the filing period as~~
20 ~~appropriate to an individual case. Failure to file a statement~~
21 ~~relieves the carrier of liability for supplemental benefits~~
22 ~~for the period during which a statement is not filed.~~

23 ~~6. The carrier shall begin payment of supplemental~~
24 ~~benefits not later than the seventh day after the expiration~~
25 ~~date of the impairment income benefit period and shall~~
26 ~~continue to timely pay those benefits. The carrier may request~~
27 ~~a mediation conference for the purpose of contesting the~~
28 ~~employee's entitlement to or the amount of supplemental income~~
29 ~~benefits.~~

30 ~~7. Supplemental benefits are calculated quarterly and~~
31 ~~paid monthly. For purposes of calculating supplemental~~

1 ~~benefits, 80 percent of the employee's average weekly wage and~~
2 ~~the average wages the employee has earned per week are~~
3 ~~compared quarterly. For purposes of this paragraph, if the~~
4 ~~employee is offered a bona fide position of employment that~~
5 ~~the employee is capable of performing, given the physical~~
6 ~~condition of the employee and the geographic accessibility of~~
7 ~~the position, the employee's weekly wages are considered~~
8 ~~equivalent to the weekly wages for the position offered to the~~
9 ~~employee.~~

10 ~~8. Supplemental benefits are payable at the rate of 80~~
11 ~~percent of the difference between 80 percent of the employee's~~
12 ~~average weekly wage determined pursuant to s. 440.14 and the~~
13 ~~weekly wages the employee has earned during the reporting~~
14 ~~period, not to exceed the maximum weekly income benefit under~~
15 ~~s. 440.12.~~

16 (c) Duration of temporary total, temporary partial
17 wage-loss, and wage-loss impairment and supplemental income
18 benefits.--The employee's eligibility for temporary total,
19 temporary partial wage-loss, and wage-loss benefits,
20 impairment income benefits, and supplemental benefits
21 terminates on the expiration of 400 ~~401~~ weeks after the date
22 of injury, except as provided in subsection (7).

23 (4) TEMPORARY PARTIAL DISABILITY.--

24 (a) In case of temporary partial disability, benefits
25 must be based on actual wage loss and are not subject to the
26 minimum compensation rate set forth in s. 440.12(2). The
27 compensation must be equal to 80 percent of the difference
28 between 80 percent of the employee's average weekly wage and
29 the salary, wages, and other remuneration the employee is able
30 to earn, as compared weekly; however, the weekly wage-loss
31 benefits may not exceed an amount equal to 66 2/3 percent of

1 the employee's average weekly wage at the time of injury. The
2 amount determined to be the salary, wages, and other
3 remuneration the employee is able to earn may in no case be
4 less than the sum actually being earned by the employee,
5 including earnings from sheltered employment.

6 (b) Whenever a temporary partial wage-loss benefit as
7 set forth in paragraph (a) may be payable, the burden is on
8 the employee to establish that any wage loss claimed is the
9 result of the compensable injury. It is also the burden of the
10 employee to show that the inability to obtain employment or to
11 earn as much as earned at the time of the industrial accident
12 is due to physical limitation related to the accident and not
13 because of economic conditions or the unavailability of
14 employment or the employee's own misconduct. Wage-loss forms
15 and job-search reports are to be mailed to the employer,
16 carrier, or servicing agent within 14 days after these
17 benefits are due. Failure of an employee to timely request
18 benefits and file the appropriate job-search forms showing
19 that the employee looked for a minimum of five jobs where
20 employment was actually available in each biweekly period
21 after the employee has knowledge that a job search is
22 required, whether the employee has been advised by the
23 employer, the carrier, the servicing agent, or the employee's
24 attorney, results in benefits not being payable during the
25 time during which the employee fails to timely file his
26 request for wage-loss forms and job-search reports. If the
27 employee voluntarily limits the employee's income, or fails to
28 accept employment commensurate with the employee's abilities,
29 or is terminated from employment due to the employee's own
30 misconduct, it is presumed, in the absence of evidence to the
31 contrary, that the salary, wages, and other remuneration that

1 the employee was able to earn for such period that the
2 employee voluntarily limited the employee's income, or failed
3 to accept employment commensurate with the employee's
4 abilities, or was terminated from employment due to the
5 employee's own misconduct is the amount that would have been
6 earned if the employee had not limited the employee's income
7 or failed to accept appropriate employment or had not been
8 terminated from employment due to the employee's own
9 misconduct. That amount must be applied against the next 3
10 biweekly payments. In the case of an employee who has not
11 voluntarily limited the employee's income, or who has not
12 failed to accept employment commensurate with the employee's
13 abilities, or who was not terminated from employment due to
14 the employee's own misconduct and who has made a good-faith
15 attempt to find employment where employment exists but remains
16 unemployed, it is presumed that the salary, wages, and other
17 remuneration the employee is able to earn was zero for each
18 week that the employee made a good-faith attempt to find
19 employment within the employee's physical and vocational
20 capabilities. However, beginning the 13th week after the
21 employee has received the first payment of a temporary partial
22 wage-loss benefit, if the employee does not obtain or maintain
23 employment, the employer or carrier may show that the salary,
24 wages, and other remuneration the employee is able to earn is
25 greater than zero by proving the existence of actual job
26 openings within a reasonable geographical area which the
27 employee is physically and vocationally capable of performing,
28 in which case the amount the employee is able to earn may be
29 deemed to be the amount the employee could earn in such jobs.
30 The amount so deemed must be applied against the next 3
31 biweekly payments.

1 (c) Temporary partial wage-loss benefits are not
2 payable to illegal aliens or to an employee who does not have
3 the required documents for work in the United States.

4 (d) Temporary partial wage-loss benefits together with
5 temporary total disability benefits must be paid during the
6 continuance of such disability, not to exceed a period of 200
7 weeks. Once the employee reaches the maximum number of weeks,
8 benefits cease and the injured worker's permanent impairment
9 must be determined.

10 ~~(a) In case of temporary partial disability,~~
11 ~~compensation shall be equal to 80 percent of the difference~~
12 ~~between 80 percent of the employee's average weekly wage and~~
13 ~~the salary, wages, and other remuneration the employee is able~~
14 ~~to earn, as compared weekly; however, the weekly benefits may~~
15 ~~not exceed an amount equal to 66 2/3 percent of the~~
16 ~~employee's average weekly wage at the time of injury. In order~~
17 ~~to simplify the comparison of the preinjury average weekly~~
18 ~~wage with the salary, wages, and other remuneration the~~
19 ~~employee is able to earn, the division may by rule provide for~~
20 ~~the modification of the weekly comparison so as to coincide as~~
21 ~~closely as possible with the injured worker's pay periods. The~~
22 ~~amount determined to be the salary, wages, and other~~
23 ~~remuneration the employee is able to earn shall in no case be~~
24 ~~less than the sum actually being earned by the employee,~~
25 ~~including earnings from sheltered employment.~~

26 ~~(b) Such benefits shall be paid during the continuance~~
27 ~~of such disability, not to exceed a period of 104 weeks, as~~
28 ~~provided by this subsection and subsection (2). Once the~~
29 ~~injured employee reaches the maximum number of weeks,~~
30 ~~temporary disability benefits cease and the injured worker's~~
31 ~~permanent impairment must be determined.~~

1 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
2 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
3 ACT.--

4 (a) Weekly compensation benefits payable under this
5 chapter for disability resulting from injuries to an employee
6 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
7 be reduced to an amount whereby the sum of such compensation
8 benefits payable under this chapter and such total benefits
9 otherwise payable for such period to the employee and her or
10 his dependents, had such employee not been entitled to
11 benefits under this chapter, under 42 U.S.C. ss. 402 or ~~and~~
12 423, does not exceed 80 percent of the employee's average
13 weekly wage, including the additional average weekly
14 compensation benefits allowed under s. 440.15(1)(f). However,
15 this provision shall not operate to reduce an injured worker's
16 benefits under this chapter to a greater extent than such
17 benefits would have otherwise been reduced under 42 U.S.C. s.
18 424(a). This reduction of compensation benefits is not
19 applicable to any compensation benefits payable for any week
20 subsequent to the week in which the injured worker reaches the
21 age of 62 years.

22 Section 11. Paragraph (b) of subsection (2) of section
23 440.191, Florida Statutes, is amended to read:

24 440.191 Employee Assistance and Ombudsman Office.--

25 (2)

26 (b) If at any time the employer or its carrier fails
27 to provide benefits to which the employee believes she or he
28 is entitled, the employee shall contact the office to request
29 assistance in resolving the dispute. The employee shall
30 simultaneously notify the employer, its carrier, and the
31 carrier's attorney, if known, in writing of the benefits to

1 which the employee believes he or she is entitled and for
2 which he or she is requesting the assistance of the office.

3 The office shall investigate the dispute and shall attempt to
4 facilitate an agreement between the employee and the employer
5 or carrier. The employee, the employer, and the carrier shall
6 cooperate with the office and shall timely provide the office
7 with any documents or other information that it may require in
8 connection with its efforts under this section.

9 Section 12. Subsection (8) of section 440.192, Florida
10 Statutes, is amended to read:

11 440.192 Procedure for resolving benefit disputes.--

12 (8) Within 14 days after receipt of a petition for
13 benefits by certified mail, the carrier must either pay the
14 requested benefits ~~without prejudice to its right to deny~~
15 ~~within 120 days from receipt of the petition~~ or file a notice
16 of intent denial with the division. The carrier must list all
17 benefits requested but not paid and explain its justification
18 for nonpayment in the notice of intent denial. ~~A carrier that~~
19 ~~does not deny compensability in accordance with s. 440.20(4)~~
20 ~~is deemed to have accepted the employee's injuries as~~
21 ~~compensable, unless it can establish material facts relevant~~
22 ~~to the issue of compensability that could not have been~~
23 ~~discovered through reasonable investigation within the 120-day~~
24 ~~period. The carrier shall provide copies of the notice to the~~
25 ~~filing party, employer, and claimant by certified mail.~~

26 Section 13. Section 440.20, Florida Statutes, is
27 amended to read:

28 440.20 Time for payment of compensation; penalties for
29 late payment.--

30 (1)(a) Unless it denies compensability or entitlement
31 to benefits, the carrier shall pay compensation directly to

1 the employee as required by ss. 440.14, 440.15, and 440.16, in
2 accordance with the obligations set forth in such sections.

3 (b) Notwithstanding any other provision of this
4 chapter, all insurance carriers, group self-insurance funds,
5 assessable mutual insurers, and the Joint Underwriting
6 Association authorized to write workers' compensation
7 insurance in this state shall make available a notice in
8 writing to the employer the fact that a state-authorized
9 deductible plan is available. Under this plan, an employer may
10 pay, for each injury for which an employee files a claim under
11 this chapter as a deductible, up to the first \$2,500 of the
12 total amount payable under compensable claims related to such
13 injury. An employer shall not be reimbursed for any amount
14 paid under this paragraph; however, the reporting requirements
15 of the employer, relating to injuries required under any
16 provision under this chapter, are not altered or alleviated.
17 The rate base of any workers' compensation insurance offered
18 pursuant to this chapter shall include the deductible
19 provision authorized by this paragraph. Any amounts paid by an
20 employer pursuant to this paragraph shall not apply in any way
21 to such employer's experience rating for injury.

22 (2) The carrier must pay the first installment of
23 compensation or deny compensability no later than the 14th day
24 after the employer receives notice of the injury or death. The
25 carrier shall thereafter pay compensation in biweekly
26 installments or as otherwise provided in s. 440.15, unless the
27 judge of compensation claims determines or the parties agree
28 that an alternate installment schedule is in the best
29 interests of the employee.

30 (3) Upon making payment, or upon suspension or
31 cessation of payment for any reason, the carrier shall

1 immediately notify the division that it has commenced,
2 suspended, or ceased payment of compensation. The division may
3 require such notification in any format it deems necessary to
4 obtain accurate and timely reporting.

5 ~~(4) If the carrier is uncertain of its obligation to~~
6 ~~provide benefits or compensation, it may initiate payment~~
7 ~~without prejudice and without admitting liability. The carrier~~
8 ~~shall immediately and in good faith commence investigation of~~
9 ~~the employee's entitlement to benefits under this chapter and~~
10 ~~shall admit or deny compensability within 120 days after the~~
11 ~~initial provision of compensation or benefits. Upon~~
12 ~~commencement of payment, the carrier shall provide written~~
13 ~~notice to the employee that it has elected to pay all or part~~
14 ~~of the claim pending further investigation, and that it will~~
15 ~~advise the employee of claim acceptance or denial within 120~~
16 ~~days. A carrier that fails to deny compensability within 120~~
17 ~~days after the initial provision of benefits or payment of~~
18 ~~compensation waives the right to deny compensability, unless~~
19 ~~the carrier can establish material facts relevant to the issue~~
20 ~~of compensability that it could not have discovered through~~
21 ~~reasonable investigation within the 120-day period.~~

22 (4)(5) If the employer has advanced compensation
23 payments or benefits to the employee, the carrier shall
24 reimburse the employer for the advanced payments if the
25 employee is entitled to compensation and benefits pursuant to
26 this chapter. The carrier may deduct such reimbursements from
27 the employee's compensation installments or, if applicable,
28 from payments to the employee ordered by a judge of
29 compensation claims.

30 (5)(6) If any installment of compensation for death or
31 dependency benefits, disability, permanent impairment, or wage

1 loss payable without an award is not paid within 14 7 days
2 after it becomes due, as provided in subsection (2) or
3 subsection (3), ~~or subsection (4)~~, there shall be added to
4 such unpaid installment a punitive penalty of an amount equal
5 to 20 percent of the unpaid installment or \$5, which shall be
6 paid at the same time as, but in addition to, such installment
7 of compensation, ~~unless notice is filed under subsection (4)~~
8 ~~or~~ unless such nonpayment results from conditions over which
9 the employer or carrier had no control. When any installment
10 of compensation payable without an award has not been paid
11 within 14 7 days after it became due and the claimant
12 concludes the prosecution of the claim before a judge of
13 compensation claims without having specifically claimed
14 additional compensation in the nature of a penalty under this
15 section, the claimant will be deemed to have acknowledged
16 that, owing to conditions over which the employer or carrier
17 had no control, such installment could not be paid within the
18 period prescribed for payment and to have waived the right to
19 claim such penalty. However, during the course of a hearing,
20 the judge of compensation claims shall on her or his own
21 motion raise the question of whether such penalty should be
22 awarded or excused. The division may assess without a hearing
23 the punitive penalty against either the employer or the
24 insurance carrier, depending upon who was at fault in causing
25 the delay. The insurance policy cannot provide that this sum
26 will be paid by the carrier if the division or the judge of
27 compensation claims determines that the punitive penalty
28 should be made by the employer rather than the carrier. Any
29 additional installment of compensation paid by the carrier
30 pursuant to this section shall be paid directly to the
31 employee.

1 (6)~~(7)~~ If any compensation, payable under the terms of
2 an award, is not paid within 7 days after it becomes due,
3 there shall be added to such unpaid compensation an amount
4 equal to 20 percent thereof, which shall be paid at the same
5 time as, but in addition to, such compensation, unless review
6 of the compensation order making such award is had as provided
7 in s. 440.25.

8 (7)~~(8)~~ In addition to any other penalties provided by
9 this chapter for late payment, if any installment of
10 compensation is not paid when it becomes due, the employer,
11 carrier, or servicing agent shall pay interest thereon at the
12 rate of 12 percent per year from the date the installment
13 becomes due until it is paid, whether such installment is
14 payable without an order or under the terms of an order. The
15 interest payment shall be the greater of the amount of
16 interest due or \$5.

17 (a) Within 30 days after final payment of compensation
18 has been made, the employer, carrier, or servicing agent shall
19 send to the division a notice, in accordance with a form
20 prescribed by the division, stating that such final payment
21 has been made and stating the total amount of compensation
22 paid, the name of the employee and of any other person to whom
23 compensation has been paid, the date of the injury or death,
24 and the date to which compensation has been paid.

25 (b) If the employer, carrier, or servicing agent fails
26 to so notify the division within such time, the division shall
27 assess against such employer, carrier, or servicing agent a
28 civil penalty in an amount not over \$100.

29 (c) In order to ensure carrier compliance under this
30 chapter, the division shall monitor the performance of
31 carriers. The division shall establish by rule minimum

1 performance standards for carriers to ensure that a minimum of
2 90 percent of all compensation benefits are timely paid. The
3 division shall fine a carrier as provided in s. 440.13(11)(b)
4 up to \$50 for each late payment of compensation that is below
5 the minimum 90 percent performance standard. This paragraph
6 does not affect the imposition of any penalties or interest
7 due to the claimant. If a carrier contracts with a servicing
8 agent to fulfill its administrative responsibilities under
9 this chapter, the payment practices of the servicing agent are
10 deemed the payment practices of the carrier for the purpose of
11 assessing penalties against the carrier.

12 (8)~~(9)~~ The division may upon its own initiative at any
13 time in a case in which payments are being made without an
14 award investigate same and shall, in any case in which the
15 right to compensation is controverted, or in which payments of
16 compensation have been stopped or suspended, upon receipt of
17 notice from any person entitled to compensation or from the
18 employer that the right to compensation is controverted or
19 that payments of compensation have been stopped or suspended,
20 make such investigations, cause such medical examination to be
21 made, or hold such hearings, and take such further action as
22 it considers will properly protect the rights of all parties.

23 (9)~~(10)~~ Whenever the division deems it advisable, it
24 may require any employer to make a deposit with the Treasurer
25 to secure the prompt and convenient payments of such
26 compensation; and payments therefrom upon any awards shall be
27 made upon order of the division or judge of compensation
28 claims.

29 (10)~~(11)~~(a) Upon joint petition of all interested
30 parties, a lump-sum payment in exchange for the employer's or
31 carrier's release from liability for future medical expenses,

1 as well as future payments of compensation expenses and any
2 other benefits provided under this chapter, shall be allowed
3 at any time in any case in which the employer or carrier has
4 filed a written notice of denial within 120 days after the
5 date of the injury, and the judge of compensation claims ~~at a~~
6 ~~hearing to consider the settlement proposal~~ finds a
7 justiciable controversy as to legal or medical compensability
8 of the claimed injury or the alleged accident. The employer or
9 carrier may not pay any attorney's fees on behalf of the
10 claimant for any settlement under this section unless
11 expressly authorized elsewhere in this chapter. Upon the joint
12 petition of all interested parties and after giving due
13 consideration to the interests of all interested parties, the
14 judge of compensation claims may enter a compensation order
15 approving and authorizing the discharge of the liability of
16 the employer for compensation and remedial treatment, care,
17 and attendance, as well as rehabilitation expenses, by the
18 payment of a lump sum. Such a compensation order so entered
19 upon joint petition of all interested parties is not subject
20 to modification or review under s. 440.28. If the settlement
21 proposal together with supporting evidence is not approved by
22 the judge of compensation claims, it shall be considered void.
23 Upon approval of a lump-sum settlement under this subsection,
24 the judge of compensation claims shall send a report to the
25 Chief Judge of the amount of the settlement and a statement of
26 the nature of the controversy. The Chief Judge shall keep a
27 record of all such reports filed by each judge of compensation
28 claims and shall submit to the Legislature a summary of all
29 such reports filed under this subsection annually by September
30 15.
31

1 (b) Upon joint petition of all interested parties, a
2 lump-sum payment in exchange for the employer's or carrier's
3 release from liability for future medical expenses, as well as
4 future payments of compensation and rehabilitation expenses,
5 and any other benefits provided under this chapter, may be
6 allowed at any time in any case after the injured employee has
7 attained maximum medical improvement. If the claimant is
8 represented by counsel, final approval of the lump-sum
9 settlement agreement, as provided for in a joint petition and
10 stipulation, must be approved by entry of an order within 7
11 days after the filing of the joint petition and stipulation
12 without a hearing, unless the judge of compensation claims
13 determines, in his or her discretion, that additional
14 testimony is needed before a settlement can be approved or
15 disapproved and so notifies the parties. In hearings conducted
16 for purposes of approving or disapproving a lump-sum
17 settlement agreement, the judge of compensation claims shall
18 allow any party to appear by telephone unless circumstances,
19 in the judge's discretion, require live testimony, and shall
20 also give consideration to other means by which the economic
21 burden on parties can be minimized.An employer or carrier may
22 not pay any attorney's fees on behalf of the claimant for any
23 settlement, unless expressly authorized elsewhere in this
24 chapter. A compensation order so entered upon joint petition
25 of all interested parties shall not be subject to modification
26 or review under s. 440.28. However, a judge of compensation
27 claims is not required to approve any award for lump-sum
28 payment when it is determined by the judge of compensation
29 claims that the payment being made is in excess of the value
30 of benefits the claimant would be entitled to under this
31 chapter. The judge of compensation claims shall make or cause

1 to be made such investigations as she or he considers
2 necessary, in each case in which the parties have stipulated
3 that a proposed final settlement of liability of the employer
4 for compensation shall not be subject to modification or
5 review under s. 440.28, to determine whether such final
6 disposition will definitely aid the rehabilitation of the
7 injured worker or otherwise is clearly for the best interests
8 of the person entitled to compensation and, in her or his
9 discretion, may have an investigation made by the
10 Rehabilitation Section of the Division of Workers'
11 Compensation. The joint petition and the report of any
12 investigation so made will be deemed a part of the proceeding.
13 An employer shall have the right to appear at any hearing
14 pursuant to this subsection which relates to the discharge of
15 such employer's liability and to present testimony at such
16 hearing. The carrier shall provide reasonable notice to the
17 employer of the time and date of any such hearing and inform
18 the employer of her or his rights to appear and testify. When
19 the claimant is represented by counsel or when the claimant
20 and carrier or employer are represented by counsel, final
21 approval of the lump-sum settlement agreement, as provided for
22 in a joint petition and stipulation, shall be approved by
23 entry of an order within 7 days after the filing of such joint
24 petition and stipulation without a hearing, unless the judge
25 of compensation claims determines, in her or his discretion,
26 that additional testimony is needed before such settlement can
27 be approved or disapproved and so notifies the parties. The
28 probability of the death of the injured employee or other
29 person entitled to compensation before the expiration of the
30 period during which such person is entitled to compensation
31 shall, in the absence of special circumstances making such

1 course improper, be determined in accordance with the most
2 recent United States Life Tables published by the National
3 Office of Vital Statistics of the United States Department of
4 Health and Human Services. The probability of the happening of
5 any other contingency affecting the amount or duration of the
6 compensation, except the possibility of the remarriage of a
7 surviving spouse, shall be disregarded. As a condition of
8 approving a lump-sum payment to a surviving spouse, the judge
9 of compensation claims, in the judge of compensation claims'
10 discretion, may require security which will ensure that, in
11 the event of the remarriage of such surviving spouse, any
12 unaccrued future payments so paid may be recovered or recouped
13 by the employer or carrier. Such applications shall be
14 considered and determined in accordance with s. 440.25.

15 (c) This section applies to all claims that the
16 parties have not previously settled, regardless of the date of
17 accident.

18 (11)~~(12)~~(a) Liability of an employer for future
19 payments of compensation may not be discharged by advance
20 payment unless prior approval of a judge of compensation
21 claims or the division has been obtained as hereinafter
22 provided. The approval shall not constitute an adjudication of
23 the claimant's percentage of disability.

24 (b) When the claimant has reached maximum recovery and
25 returned to her or his former or equivalent employment with no
26 substantial reduction in wages, such approval of a reasonable
27 advance payment of a part of the compensation payable to the
28 claimant may be given informally by letter by a judge of
29 compensation claims, by the division director, or by the
30 administrator of claims of the division.

31

1 (c) In the event the claimant has not returned to the
2 same or equivalent employment with no substantial reduction in
3 wages or has suffered a substantial loss of earning capacity
4 or a physical impairment, actual or apparent:

5 1. An advance payment of compensation not in excess of
6 \$2,000 may be approved informally by letter, without hearing,
7 by any judge of compensation claims or the Chief Judge.

8 2. An advance payment of compensation not in excess of
9 \$2,000 may be ordered by any judge of compensation claims
10 after giving the interested parties an opportunity for a
11 hearing thereon pursuant to not less than 10 days' notice by
12 mail, unless such notice is waived, and after giving due
13 consideration to the interests of the person entitled thereto.
14 When the parties have stipulated to an advance payment of
15 compensation not in excess of \$2,000, such advance may be
16 approved by an order of a judge of compensation claims, with
17 or without hearing, or informally by letter by any such judge
18 of compensation claims, or by the division director, if such
19 advance is found to be for the best interests of the person
20 entitled thereto.

21 3. When the parties have stipulated to an advance
22 payment in excess of \$2,000, subject to the approval of the
23 division, such payment may be approved by a judge of
24 compensation claims by order if the judge finds that such
25 advance payment is for the best interests of the person
26 entitled thereto and is reasonable under the circumstances of
27 the particular case. The judge of compensation claims shall
28 make or cause to be made such investigations as she or he
29 considers necessary concerning the stipulation and, in her or
30 his discretion, may have an investigation of the matter made
31 by the Rehabilitation Section of the division. The stipulation

1 and the report of any investigation shall be deemed a part of
2 the record of the proceedings.

3 (d) When an application for an advance payment in
4 excess of \$2,000 is opposed by the employer or carrier, it
5 shall be heard by a judge of compensation claims after giving
6 the interested parties not less than 10 days' notice of such
7 hearing by mail, unless such notice is waived. In her or his
8 discretion, the judge of compensation claims may have an
9 investigation of the matter made by the Rehabilitation Section
10 of the division, in which event the report and recommendation
11 of that section will be deemed a part of the record of the
12 proceedings. If the judge of compensation claims finds that
13 such advance payment is for the best interests of the person
14 entitled to compensation, will not materially prejudice the
15 rights of the employer and carrier, and is reasonable under
16 the circumstances of the case, she or he may order the same
17 paid. However, in no event may any such advance payment under
18 this paragraph be granted in excess of \$7,500 or 26 weeks of
19 benefits in any 48-month period, whichever is greater, from
20 the date of the last advance payment.

21 (12)~~(13)~~ If the employer has made advance payments of
22 compensation, she or he shall be entitled to be reimbursed out
23 of any unpaid installment or installments of compensation due.

24 (13)~~(14)~~ When an employee is injured and the employer
25 pays the employee's full wages or any part thereof during the
26 period of disability, or pays medical expenses for such
27 employee, and the case is contested by the carrier or the
28 carrier and employer and thereafter the carrier, either
29 voluntarily or pursuant to an award, makes a payment of
30 compensation or medical benefits, the employer shall be
31 entitled to reimbursement to the extent of the compensation

1 paid or awarded, plus medical benefits, if any, out of the
2 first proceeds paid by the carrier in compliance with such
3 voluntary payment or award, provided the employer furnishes
4 satisfactory proof to the judge of compensation claims of such
5 payment of compensation and medical benefits. Any payment by
6 the employer over and above compensation paid or awarded and
7 medical benefits, pursuant to subsection (12)~~(13)~~, shall be
8 considered a gratuity.

9 (14)~~(15)~~(a) The division shall examine on an ongoing
10 basis claims files in order to identify questionable
11 claims-handling techniques, questionable patterns or practices
12 of claims, or a pattern of repeated unreasonably controverted
13 claims by employers, carriers, self-insurers, health care
14 providers, health care facilities, training and education
15 providers, or any others providing services to employees
16 pursuant to this chapter and may certify its findings to the
17 Department of Insurance. Such questionable techniques,
18 patterns, or repeated unreasonably controverted claims as
19 constitute a general business practice of a carrier in the
20 judgment of the division shall be certified in its findings by
21 the division to the Department of Insurance or such other
22 appropriate licensing agency. Such certification by the
23 division is exempt from the provisions of chapter 120. Upon
24 receipt of any such certification, the Department of Insurance
25 shall take appropriate action so as to bring such general
26 business practices to a halt pursuant to s. 440.38(3)(a). The
27 division may initiate investigations of questionable
28 techniques, patterns, practices, or repeated unreasonably
29 controverted claims.

30
31

1 (b) As to any examination, investigation, or hearing
2 being conducted under this chapter, the Secretary of Labor and
3 Employment Security or the secretary's designee:

4 1. May administer oaths, examine and cross-examine
5 witnesses, receive oral and documentary evidence; and

6 2. Shall have the power to subpoena witnesses, compel
7 their attendance and testimony, and require by subpoena the
8 production of books, papers, records, files, correspondence,
9 documents, or other evidence which is relevant to the inquiry.

10 (c) If any person refuses to comply with any such
11 subpoena or to testify as to any matter concerning which she
12 or he may be lawfully interrogated, the Circuit Court of Leon
13 County or of the county wherein such examination,
14 investigation, or hearing is being conducted, or of the county
15 wherein such person resides, may, on the application of the
16 department, issue an order requiring such person to comply
17 with the subpoena and to testify.

18 (d) Subpoenas shall be served, and proof of such
19 service made, in the same manner as if issued by a circuit
20 court. Witness fees, costs, and reasonable travel expenses, if
21 claimed, shall be allowed the same as for testimony in a
22 circuit court.

23 (e) The division shall publish annually a report which
24 indicates the promptness of first payment of compensation
25 records of each carrier or self-insurer so as to focus
26 attention on those carriers or self-insurers with poor payment
27 records for the preceding year. A copy of such report shall be
28 certified to the Department of Insurance which shall take
29 appropriate steps so as to cause such poor carrier payment
30 practices to halt pursuant to s. 440.38(3)(a). In addition,
31 the division shall take appropriate action so as to halt such

1 poor payment practices of self-insurers. "Poor payment
2 practice" means a practice of late payment sufficient to
3 constitute a general business practice.

4 (f) The division shall promulgate rules providing
5 guidelines to carriers, self-insurers, and employers to
6 indicate behavior that may be construed as questionable
7 claims-handling techniques, questionable patterns of claims,
8 repeated unreasonably controverted claims, or poor payment
9 practices.

10 (15)~~(16)~~ No penalty assessed under this section may be
11 recouped by any carrier or self-insurer in the rate base, the
12 premium, or any rate filing. In the case of carriers, the
13 Department of Insurance shall enforce this subsection; and in
14 the case of self-insurers, the division shall enforce this
15 subsection.

16 Section 14. Section 440.34, Florida Statutes, is
17 amended to read:

18 440.34 Attorney's fees; costs.--

19 (1) A fee, gratuity, or other consideration may not be
20 paid for services rendered for a claimant in connection with
21 any proceedings arising under this chapter, unless approved as
22 reasonable by the judge of compensation claims or court having
23 jurisdiction over such proceedings. Except as provided by this
24 subsection, any attorney's fee approved by a judge of
25 compensation claims for services rendered to a claimant must
26 equal to 20 percent of the first \$5,000 of the amount of the
27 benefits actually paid under an order or joint stipulation
28 ~~secured~~, 15 percent of the next \$5,000 of the amount of the
29 benefits actually paid under an order or joint stipulation
30 ~~secured~~, 10 percent of the remaining amount of the benefits
31 actually paid under an order or joint stipulation ~~secured~~ to

1 be provided during the first 10 years after the date the claim
2 is filed, and 5 percent of the benefits actually paid under an
3 order or joint stipulation ~~secured~~ after 10 years.

4 (2) Under no circumstances may an attorney's fee be
5 awarded other than on a contingency basis. The calculation of
6 fees based on an hourly rate is prohibited.

7 (3) Prejudgment or postjudgment interest may not be
8 included in attorney's fees awarded under this section.

9 (4) The employee must be given notice of the
10 attorney's fee hearing and has the right to testify at the
11 hearing. The employee must receive a copy of any stipulation
12 or order awarding attorney's fees. ~~However, the judge of~~
13 ~~compensation claims shall consider the following factors in~~
14 ~~each case and may increase or decrease the attorney's fee if,~~
15 ~~in her or his judgment, the circumstances of the particular~~
16 ~~case warrant such action:~~

17 ~~(a) The time and labor required, the novelty and~~
18 ~~difficulty of the questions involved, and the skill requisite~~
19 ~~to perform the legal service properly.~~

20 ~~(b) The fee customarily charged in the locality for~~
21 ~~similar legal services.~~

22 ~~(c) The amount involved in the controversy and the~~
23 ~~benefits resulting to the claimant.~~

24 ~~(d) The time limitation imposed by the claimant or the~~
25 ~~circumstances.~~

26 ~~(e) The experience, reputation, and ability of the~~
27 ~~lawyer or lawyers performing services.~~

28 ~~(f) The contingency or certainty of a fee.~~

29 (5)(2) In awarding a reasonable claimant's attorney's
30 fee, the judge of compensation claims shall consider only
31 those benefits to the claimant that the attorney is

1 responsible for under an order or stipulation ~~securing~~. The
2 amount, statutory basis, and type of benefits obtained through
3 legal representation shall be listed on all attorney's fees
4 awarded by the judge of compensation claims. For purposes of
5 this section, the term "benefits paid ~~secured~~" means benefits
6 obtained as a result of the claimant's attorney's legal
7 services rendered in connection with the petition ~~claim~~ for
8 benefits. However, such term does not include future medical
9 benefits to be provided on any date more than 5 years after
10 the date the petition ~~claim~~ is filed.

11 ~~(6)(3)~~ If the claimant should prevail in any
12 proceedings before a judge of compensation claims or court,
13 there shall be taxed against the employer the reasonable costs
14 of such proceedings, not to include the attorney's fees of the
15 claimant. A claimant shall be responsible for the payment of
16 her or his own attorney's fees, except that a claimant shall
17 be entitled to recover a reasonable attorney's fee from a
18 carrier or employer:

19 (a) Against whom she or he successfully asserts a
20 petition ~~claim~~ for medical benefits only, of an amount \$1,000
21 or greater if the claimant has not filed or is not entitled to
22 file at such time a petition ~~claim~~ for disability, permanent
23 impairment, wage-loss, or death benefits, arising out of the
24 same accident; or

25 (b) In any case in which the employer or carrier files
26 a notice of denial with the division, which notice of denial
27 denies the benefits sought, and the injured person has
28 employed an attorney in the successful prosecution of the
29 petition, except on issues as to the average weekly wage
30 ~~claim~~; or

31

1 (c) In a proceeding in which a carrier or employer
2 denies that an injury occurred for which compensation benefits
3 are payable, and the claimant prevails on the issue of
4 compensability; or

5 (d) In cases where the claimant successfully prevails
6 in proceedings filed under s. 440.24 or s. 440.28.

7
8 ~~In applying the factors set forth in subsection (1) to cases~~
9 ~~arising under paragraphs (a), (b), (c), and (d), the judge of~~
10 ~~compensation claims must only consider only such benefits and~~
11 ~~the time reasonably spent in obtaining them as were secured~~
12 ~~for the claimant within the scope of paragraphs (a), (b), (c),~~
13 ~~and (d).~~

14 (7)~~(4)~~ In such cases in which the claimant is
15 responsible for the payment of her or his own attorney's fees,
16 such fees are a lien upon compensation payable to the
17 claimant, notwithstanding s. 440.22.

18 (8)~~(5)~~ If any proceedings are had for review of any
19 petition claim, award, or compensation order before any court,
20 the court may award the injured employee or dependent an
21 attorney's fee to be paid by the employer or carrier, in its
22 discretion, which shall be paid as the court directs when
23 benefits have been awarded to the claimant under the appeal
24 may direct. The fee may not equal more than \$125 an hour.

25 (9)~~(6)~~ A judge of compensation claims may not enter an
26 order approving the contents of a retainer agreement that
27 permits the escrowing of any portion of the employee's
28 compensation until benefits have been secured.

29 Section 15. Section 440.595, Florida Statutes, is
30 created to read:

31

1 440.595 Oaths and witnesses.--The division may
2 administer oaths and affirmations and issue subpoenas to
3 compel the attendance of witnesses and the production of
4 books, papers, correspondence, memoranda, and other records
5 deemed necessary as evidence in order to ensure proper
6 compliance with the coverage provisions of this chapter.

7 Section 16. Section 440.596, Florida Statutes, is
8 created to read:

9 440.596 Florida Workers' Compensation Management
10 Board, Inc.--

11 (1) There is created a nonprofit corporation to be
12 known as the "Florida Workers' Compensation Management Board,
13 Inc." The corporation shall operate under a plan developed by
14 its board of directors and approved by the Division of
15 Workers' Compensation. The board is not a state agency, board,
16 or commission.

17 (2) The purpose of the corporation is to provide
18 management operations and services necessary for the
19 administration of the workers' compensation system which are
20 more efficiently performed by private enterprise. By
21 transferring most of the duties of the Division of Workers'
22 Compensation to the corporation, the state will have the
23 resources to undertake and focus on functions that are
24 appropriate and within the purview of state government. The
25 use of private enterprise facilitates an efficient,
26 cost-effective system that will more quickly respond to
27 dynamic changes within the compensation system.

28 (3)(a) The board of directors of the corporation shall
29 consist of nine members, eight of whom shall be appointed by
30 the Governor. The Governor shall appoint four members as
31 representatives of labor interests and four members as

1 representatives of employers. A ninth member shall be elected
2 by a majority vote of the other members. Two members appointed
3 as representatives of labor interests and two members
4 appointed as representatives of management interests shall be
5 appointed for 2-year terms. The remaining appointees shall be
6 appointed to serve 4-year terms. Thereafter all members shall
7 be appointed to serve for terms of 4 years, except that a
8 vacancy shall be filled by appointment for the remainder of
9 the term. Directors may be reappointed but may not serve for
10 more than two consecutive terms. All directors must have
11 significant experience in the workers' compensation system,
12 must not have an ownership or material financial interest in
13 any entity that receives payments from the compensation
14 system, and may not receive contracts from the corporation for
15 services while serving on the board of directors or within 2
16 years after service on the board of directors.

17 (b) Each member is accountable to the Governor for
18 proper performance of his or her duties as a member of the
19 board of directors. The Governor may remove any member from
20 office for malfeasance, misfeasance, neglect of duty,
21 drunkenness, incompetence, or permanent inability to perform
22 official duties, or for pleading guilty or nolo contendere to,
23 or having been adjudicated guilty of, a felony or a
24 first-degree misdemeanor.

25 (c) The directors shall serve without salary, but each
26 director shall be reimbursed for actual and necessary expenses
27 incurred in the performance of his or her official duties as a
28 director, in accordance with s. 112.061. The directors shall
29 not be subject to any liability under any theory of recovery
30 without a showing of fraud or malice.

31

1 (4) The appropriations dedicated to the plan of
2 operation shall be administered by the board of directors. On
3 or before September 1, 1999, the directors of the corporation
4 shall submit to the Division of Workers' Compensation for
5 review a plan of operation. The plan must provide for
6 efficient administration of the system and for prompt
7 processing of forms, efficient methods of data collection, and
8 creation of alternative dispute-resolution mechanisms that
9 will facilitate a self-executing workers' compensation system.
10 The plan of operation may be changed at any time by the board
11 of directors or upon request by the Department of Labor and
12 Employment Security. The plan of operation and all changes
13 thereto are subject to the approval of the department. The
14 plan of operation must include, but is not limited to,
15 components authorizing the board to:

16 (a) Engage in the activities necessary and incidental
17 to provide the management functions necessary for the
18 operation of the workers' compensation system.

19 (b) Provide consulting services to the Division of
20 Workers' Compensation and the Department of Labor and
21 Employment Security.

22 (c) Borrow money.

23 (d) Efficiently process reporting requirements
24 required by law.

25 (e) Develop alternative dispute-resolution mechanisms,
26 including funding of personnel, equipment, and facilities that
27 will enhance the expedient resolution of conflicts between
28 injured employees and the employer or carrier.

29 (f) Enter contractual arrangements with the state to
30 allow for the purchase or lease of surplus office equipment,
31 computers, or data systems from the Division of Workers'

1 Compensation, or from any other state entity, which will allow
2 for an efficient transition of functions from the Division of
3 Workers' Compensation to operations by the corporation.

4 (g) Provide for annual reports to the department on
5 expenditures and completion of plan objectives and
6 recommendations for future plan goals.

7 (h) Delegate and enter contractual arrangements for
8 administering and completing corporation responsibilities.

9 (i) Provide for the processing and dissemination of
10 payments approved by the division from the Special Disability
11 Trust Fund.

12 (5)(a) The board of directors shall employ a chief
13 operating officer to conduct the day-to-day operations of the
14 corporation in accordance with policies established by the
15 board of directors and otherwise implement the policy of the
16 board of directors. The chief operating officer shall hire
17 personnel according to policies adopted by the board of
18 directors to assist in completing the corporation's
19 objectives.

20 (b) All personnel hired by the board of directors,
21 including the chief executive officer, are corporation
22 employees that serve at the pleasure of the board of directors
23 and are not subject to state employee hiring and termination
24 requirements.

25 (c) The plan shall include provisions for a retirement
26 program for plan employees. The retirement program shall
27 provide credit for years of service working for the Department
28 of Labor and Employment Security.

29 (6) The board of directors shall appoint a standing
30 technical advisory committee to advise it on the implications
31 of data-reporting requirements and recommend alternative

1 reporting and processing requirements that will enhance plan
2 efficiency. The technical advisory committee shall be
3 appointed by the chief executive officer with the concurrence
4 of the board of directors and shall include representatives of
5 insurance entities from group self-insurance funds authorized
6 by s. 624.462, assessable mutual insurers authorized under s.
7 628.6011, and insurers licensed to write workers' compensation
8 and employer's liability insurance in this state.

9 Section 17. Paragraph (f) of subsection (2) of section
10 20.711 and section 440.4416, Florida Statutes, are repealed.

11 Section 18. This act shall take effect October 1,
12 1998.

13
14 *****

15 SENATE SUMMARY

16 Creates the Workers' Compensation Appeals Commission and
17 the Florida Workers' Compensation Management Board,
18 Incorporated. Provides for the membership, terms, powers,
19 and duties of the commission and the board. Amends
20 various sections of chapter 440, F.S., revising
21 procedures and criteria for the administration of the
22 workers' compensation system. (See bill for details.)
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