

By Representative Arnall

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 20.171, F.S.; deleting the Division  
4           of Safety of the Department of Labor and  
5           Employment Security; creating the Workers'  
6           Compensation Appeals Commission; providing for  
7           appointments of commission judges; providing  
8           qualifications; providing authority, powers,  
9           duties, and responsibilities of judges;  
10          authorizing certain expenditures; authorizing  
11          imposition of charges and fees; providing  
12          powers of the presiding judge; requiring the  
13          commission to operate a clerk's office;  
14          providing for appointment of a clerk; providing  
15          duties of the clerk; providing for a seal;  
16          authorizing destruction of obsolete records;  
17          providing for reimbursement of travel expenses;  
18          providing for rules governing practice and  
19          procedure; amending s. 440.02, F.S.; revising  
20          certain definitions; amending s. 440.05, F.S.;  
21          proscribing exemption from application for  
22          certain persons; amending s. 440.10, F.S., to  
23          conform; amending s. 440.09, F.S.; specifying  
24          criteria for coverage of certain mental or  
25          nervous injuries; prohibiting compensation for  
26          psychiatric impairments; providing for  
27          rebutting a presumption; providing for alcohol  
28          testing; amending s. 440.107, F.S.; requiring  
29          the Division of Workers' Compensation to assess  
30          civil penalties under certain circumstances;  
31          requiring the division to assess certain

1 penalties against certain employers under  
2 certain circumstances; amending s. 440.13,  
3 F.S.; providing for alternative medical care;  
4 providing construction; providing for  
5 independent medical examinations; providing for  
6 responsibility for costs of independent medical  
7 examination a; amending s. 440.134, F.S.;  
8 providing additional definitions; authorizing  
9 certain employers to opt out of mandatory  
10 managed care arrangements under certain  
11 circumstances; providing for informal and  
12 formal grievance procedures; providing criteria  
13 and requirements; excluding certain injuries  
14 from determinations by the Agency for Health  
15 Care Administration of compliance; amending s.  
16 440.14, F.S.; revising provisions relating to  
17 determinations of pay; excluding average weekly  
18 wage issues from attorney's fees; providing for  
19 use of actual wages earned under certain  
20 circumstances; amending s. 440.15, F.S.;  
21 revising provisions providing for payment of  
22 compensation for disability relating to  
23 permanent total disability, temporary total  
24 disability, permanent impairment and wage-loss  
25 benefits, and temporary partial disability;  
26 replacing criteria, procedures, and  
27 requirements for payment of supplemental  
28 benefits with such provisions for wage-loss  
29 benefits; amending s. 440.191, F.S.; requiring  
30 employees to notify certain persons of expected  
31 benefits; amending s. 440.192, F.S.; clarifying

1 a procedure for resolving benefit disputes;  
2 deleting a presumption; amending s. 440.20,  
3 F.S.; increasing a time period for payment of  
4 certain compensation without penalty; providing  
5 for approval of lump sum settlement agreements  
6 under certain circumstances; amending s.  
7 440.34, F.S.; clarifying award of attorney's  
8 fees; deleting authorization to adjust  
9 attorney's fees; prohibiting attorney's fees  
10 based on an hourly rate; prescribing award of  
11 attorney's fees on a contingency basis;  
12 excluding certain interest in awarding  
13 attorney's fees; requiring notice to employees  
14 of attorney fee hearings; clarifying  
15 assessments of costs of certain proceedings;  
16 limiting attorney's fees in certain  
17 proceedings; creating s. 440.594, F.S.;  
18 requiring employers to keep certain records and  
19 reports; creating s. 440.595, F.S.; providing  
20 for oaths and witnesses; creating s. 440.596,  
21 F.S.; creating the Florida Workers'  
22 Compensation Management Board; providing  
23 purposes; providing for membership and terms  
24 and qualifications of members; providing for  
25 removal of members; providing for reimbursing  
26 members for certain expenses; providing powers  
27 and duties of the board; requiring the board to  
28 employ a chief operating officer for certain  
29 purposes; requiring the board to appoint a  
30 standing technical advisory committee for  
31 certain purposes; providing for membership;

1           amending ss. 442.003, 442.014, 442.023, 442.20,  
2           627.0915, 627.212, and 627.311, F.S.; providing  
3           for certain duties and responsibilities of the  
4           Division of Safety of the Department of Labor  
5           and Employment Security to be performed by the  
6           Division of Workers' Compensation; repealing s.  
7           440.4416, F.S., relating to the Workers'  
8           Compensation Oversight Board; providing an  
9           effective date.

10

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

12

13           Section 1. Subsections (2) and (3) of section 20.171,  
14 Florida Statutes, are amended, and subsection (5) is added to  
15 said section, to read:

16

17           20.171 Department of Labor and Employment  
18 Security.--There is created a Department of Labor and  
19 Employment Security.

20

21           (2) The following divisions, and bureaus within the  
22 divisions, of the Department of Labor and Employment Security  
23 are established:

24

25           (a) Division of Jobs and Benefits.

26

27           (b) Division of Unemployment Compensation.

28

29           (c) Division of Administrative Services.

30

31           (d) Division of Workers' Compensation.

32

33           (e) Division of Vocational Rehabilitation.

34

35           ~~(f) Division of Safety.~~

36

37           (f)(g) Division of Blind Services.

38

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

41

42           (a) Public Employees Relations Commission.

1           (b) Unemployment Appeals Commission.  
2           (c) Workers' Compensation Appeals Commission.  
3           (5)(a)1.a. There is created within the Department of  
4 Labor and Employment Security a Workers' Compensation Appeals  
5 Commission consisting of a presiding judge and four other  
6 judges, appointed by the Governor after October 1, 1998, but  
7 before May 15, 1999, and serving full time. Each appointee  
8 shall have the qualifications required by law for judges of  
9 the District Courts of Appeal. In addition to such  
10 qualifications, the judges of the Workers' Compensation  
11 Appeals Commission shall be substantially experienced in the  
12 field of workers' compensation.  
13           b. Initially, the Governor shall appoint two judges  
14 for terms of 4 years, two judges for terms of 3 years, and one  
15 judge for a term of 2 years. Thereafter, each full time judge  
16 shall be appointed for a term of 4 years, but during the term  
17 of office may be removed by the Governor for cause.  
18           c. The initial appointment process, retention process,  
19 and filling of vacancies of unexpired terms for the judges  
20 shall be pursuant to nominations by the Workers' Compensation  
21 Appeals Nominating Commission. The Workers' Compensation  
22 Appeals Nominating Commission shall submit a list to the  
23 Governor by August 1, 1998, of fifteen candidates for the five  
24 initial appointments from which list the Governor shall  
25 appoint the judges of the commission.  
26           d. Prior to the expiration of the term of office of a  
27 judge, the conduct of such judge shall be reviewed by the  
28 Workers' Compensation Appeals Nominating Commission. A report  
29 of the Workers' Compensation Appeals Nominating Commission  
30 regarding retention shall be furnished to the Governor no  
31 later than 6 months prior to the expiration of the term of the

1 judge. If the Workers' Compensation Appeals Nominating  
2 Commission issues a favorable report, the Governor shall  
3 reappoint the judge. However, if the Workers' Compensation  
4 Appeals Nominating Commission issues an unfavorable report,  
5 the Workers' Compensation Appeals Nominating Commission shall  
6 issue a report to the Governor which shall include a list of  
7 three candidates for appointment. In the event a vacancy  
8 occurs during an unexpired term of a judge on the Workers'  
9 Compensation Appeals Commission, the Workers' Compensation  
10 Appeals Nominating Commission shall issue a report to the  
11 Governor which shall include a list of three candidates for  
12 appointment.

13 e. Judges of the Workers' Compensation Appeals  
14 Commission are subject to the jurisdiction of the Judicial  
15 Qualifications Commission during their term of office.

16 2. The presiding judge may, by order filed with the  
17 commission and approved by the Governor, appoint an associate  
18 judge to serve as a temporary judge of the commission. Such  
19 appointment may be made only of a currently commissioned judge  
20 of compensation claims. Such appointment shall be for such  
21 period of time as to not cause an undue burden on the caseload  
22 in the judge's jurisdiction. Each associate judge shall  
23 receive no additional pay during the appointment except for  
24 expenses incurred in the performance of the additional duties.

25 3. Total salaries and benefits of judges of the  
26 commission are to be paid from the Workers' Compensation  
27 Administration Trust Fund established under s. 440.50.  
28 Notwithstanding any other provision of law, commission judges  
29 shall be paid a salary equal to that paid by law to judges of  
30 District Courts of Appeal.

31

1           (b)1. The commission is vested with all authority,  
2 powers, duties, and responsibilities relating to review of  
3 orders of judges of compensation claims in workers'  
4 compensation proceedings under chapter 440. The commission  
5 shall review by appeal final orders of the judges of  
6 compensation claims entered pursuant to chapter 440. The First  
7 District Court of Appeal shall retain jurisdiction over all  
8 workers' compensation proceedings pending before the court on  
9 October 1, 1998. The commission may hold sessions and conduct  
10 hearings at any place within the state. Three judges shall  
11 consider each case and the concurrence of two shall be  
12 necessary for any decision. Any judge may request an en banc  
13 hearing for review of a final order of a judge of compensation  
14 claims.

15           2. The Workers' Compensation Appeals Commission shall  
16 be within the Department of Labor and Employment Security but,  
17 in the performance of its powers and duties under chapter 440,  
18 shall not be subject to control, supervision, or direction by  
19 the Department of Labor and Employment Security. The  
20 commission is not an agency for purposes of chapter 120.

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

25           (c) The commission shall make such expenditures,  
26 including expenditures for personnel services and rent at the  
27 seat of government and elsewhere, for law books, reference  
28 materials, periodicals, furniture, equipment, and supplies,  
29 and for printing and binding, as may be necessary in  
30 exercising its authority and powers and carrying out its  
31 duties and responsibilities. All such expenditures of the

1 commission shall be allowed and paid as provided in s. 440.50  
2 upon the presentation of itemized vouchers for such  
3 expenditures, approved by the presiding judge.

4 (d) The commission may charge, in its discretion, for  
5 publications, subscriptions, and copies of records and  
6 documents. Such fees shall be deposited into the Workers'  
7 Compensation Administration Trust Fund.

8 (e)1. The presiding judge shall exercise  
9 administrative supervision over the Workers' Compensation  
10 Appeals Commission and over the judges and other officers of  
11 the commission.

12 2. The presiding judge of the Workers' Compensation  
13 Appeals Commission may:

14 a. Assign judges to hear appeals from final orders of  
15 judges of compensation claims.

16 b. Hire and assign clerks and staff.

17 c. Regulate use of courtrooms.

18 d. Supervise dockets and calendars.

19 e. Do everything necessary to promote the prompt and  
20 efficient administration of justice in the courts over which  
21 he or she presides.

22 3. The presiding judge shall be selected by a majority  
23 of the judges for a term of 2 years. The presiding judge may  
24 succeed himself or herself for successive terms.

25 4. The presiding judge may employ an executive  
26 assistant who shall perform such duties as the presiding judge  
27 may direct. Additionally, each judge may have research  
28 assistants or law clerks.

29 (f)1. The commission shall maintain and keep open  
30 during reasonable business hours a clerk's office, located in  
31 the Capitol or some other suitable building in Leon County,



1 for the transaction of commission business. All books, papers,  
2 records, files, and the seal of the commission shall be kept  
3 at such office. The office shall be furnished and equipped by  
4 the commission.

5 2. The Workers' Compensation Appeals Commission shall  
6 appoint a clerk who shall hold office at the pleasure of the  
7 commission. Before discharging the duties of the clerk, the  
8 clerk shall give bond in the sum of \$5,000 payable to the  
9 Governor of the state, to be approved by a majority of the  
10 members of the commission and conditioned upon the faithful  
11 discharge of the duties of the clerk's office, which bond  
12 shall be filed in the office of the Secretary of State.

13 3. The clerk shall be paid an annual salary to be  
14 determined in accordance with s. 25.382.

15 4. The clerk may employ such deputies and clerical  
16 assistants as may be necessary. The number and compensation of  
17 such deputies and assistants shall be as approved by the  
18 commission and paid from the annual appropriation for the  
19 Workers' Compensation Appeals Commission from the Workers'  
20 Compensation Administration Trust Fund.

21 5. The clerk, upon the filing of a certified copy of a  
22 notice of appeal or petition, shall charge and collect a  
23 filing fee of \$250 for each case docketed and shall charge and  
24 collect for copying, certifying, or furnishing opinions,  
25 records, papers, or other instruments, and for other services  
26 the same service charges as provided in s. 28.24. The state or  
27 an agency of the state, when appearing as appellant or  
28 petitioner, is exempt from such filing fee.

29 6. The clerk of the Workers' Compensation Appeals  
30 Commission shall prepare a statement of all fees collected  
31 each month, in duplicate, and shall remit one copy of such

1 statement, together with all fees collected by the clerk, to  
2 the Comptroller who shall deposit such fees into the Workers'  
3 Compensation Administration Trust Fund.

4 (g) The commission shall have a seal for  
5 authentication of orders, awards, and proceedings and upon  
6 which shall be inscribed the words "State of Florida Workers'  
7 Compensation Appeals Commission--Seal", and the seal shall be  
8 judicially noticed.

9 (h) The commission may destroy obsolete records of the  
10 commission.

11 (i) Judges of the Workers' Compensation Appeals  
12 Commission shall be reimbursed for travel expenses as provided  
13 in s. 112.061.

14 (j) Practice and procedure before the commission and  
15 of judges of compensation claims shall be governed by rules  
16 adopted by the Supreme Court except to the extent such rules  
17 conflict with the provisions of chapter 440.

18 Section 2. Subsections (24) and (34) of section  
19 440.02, Florida Statutes, are amended to read:

20 440.02 Definitions.--When used in this chapter, unless  
21 the context clearly requires otherwise, the following terms  
22 shall have the following meanings:

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

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

16 (34) "Catastrophic injury" means a permanent  
17 impairment constituted by:

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

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

22 (c) Severe brain or closed-head injury caused by head  
23 trauma as evidenced by:

24 1. Severe sensory or motor disturbances;

25 2. Severe communication disturbances;

26 3. Severe complex integrated disturbances of cerebral  
27 function;

28 4. Severe episodic neurological disorders; or

29 5. Other severe brain and closed-head injury  
30 conditions at least as severe in nature as any condition  
31 provided in subparagraphs 1.-4.;

1           (d) Second-degree or third-degree burns of 25 percent  
2 or more of the total body surface or third-degree burns of 5  
3 percent or more to the face and hands; or

4           (e) Total or industrial blindness; ~~or~~

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

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

14           440.05 Election of exemption; revocation of election;  
15 notice; certification.--

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

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

26 Section 4. Subsection (1) and paragraphs (b) and (c)  
27 of subsection (7) of section 440.09, Florida Statutes, are  
28 amended to read:

29 440.09 Coverage.--

30 (1) The employer shall pay compensation or furnish  
31 benefits required by this chapter if the employee suffers an

1 accidental compensable injury or death arising out of work  
2 performed in the course and the scope of employment. The  
3 injury, its occupational cause, and any resulting  
4 manifestations, ~~or~~ disability, or impairment shall be  
5 established to a reasonable degree of medical certainty and by  
6 objective medical findings. Mental or nervous injuries  
7 occurring as a manifestation of an injury compensable under  
8 this section shall be demonstrated by clear and convincing  
9 evidence by objective medical findings as a result of the  
10 injury from a division certified psychiatrist. In no event is  
11 compensation payable as a result of any impairment rating for  
12 psychiatric impairments.

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

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

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

30 (d) If an accident happens while the employee is  
31 employed elsewhere than in this state, which would entitle the

1 employee or his or her dependents to compensation if it had  
2 happened in this state, the employee or his or her dependents  
3 are entitled to compensation if the contract of employment was  
4 made in this state, or the employment was principally  
5 localized in this state. However, if an employee receives  
6 compensation or damages under the laws of any other state, the  
7 total compensation for the injury may not be greater than is  
8 provided in this chapter.

9 (7)

10 (b) If the employee has, at the time of the injury, a  
11 blood alcohol level equal to or greater than the level  
12 specified in s. 316.193, or if the employee has a positive  
13 confirmation of a drug as defined in this act, it is presumed  
14 that the injury was occasioned primarily by the intoxication  
15 of, or by the influence of the drug upon, the employee. In the  
16 presence of a drug-free workplace program, this presumption  
17 may be rebutted by the employee with evidence beyond a  
18 reasonable doubt that the intoxication or influence of the  
19 drug did not contribute to the injury.In the absence of a  
20 drug-free workplace program, this presumption may be rebutted  
21 by clear and convincing evidence that the intoxication or  
22 influence of the drug did not contribute to the injury.  
23 Percent by weight of alcohol in the blood must be based upon  
24 grams of alcohol per 100 milliliters of blood. If the results  
25 are positive, the testing facility must maintain the specimen  
26 for a minimum of 90 days. Blood serum may be used for testing  
27 purposes under this chapter; however, if this test is used,  
28 the presumptions under this section do not arise unless the  
29 blood alcohol level is proved to be medically and  
30 scientifically equivalent to or greater than the comparable  
31 blood alcohol level that would have been obtained if the test

1 were based on percent by weight of alcohol in the blood.  
2 However, if, before the accident, the employer had actual  
3 knowledge of and expressly acquiesced in the employee's  
4 presence at the workplace while under the influence of such  
5 alcohol or drug, the presumptions specified in this subsection  
6 do not apply.

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

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

13 440.10 Liability for compensation.--

14 (1)(a) Every employer coming within the provisions of  
15 this chapter, including any brought within the chapter by  
16 waiver of exclusion or of exemption, shall be liable for, and  
17 shall secure, the payment to his or her employees, or any  
18 physician, surgeon, or pharmacist providing services under the  
19 provisions of s. 440.13, of the compensation payable under ss.  
20 440.13, 440.15, and 440.16. Any contractor or subcontractor  
21 who engages in any public or private construction in the state  
22 shall secure and maintain compensation for his or her  
23 employees under this chapter as provided in s. 440.38.

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



1           (c) A contractor may require a subcontractor to  
2 provide evidence of workers' compensation insurance or a copy  
3 of his or her certificate of election. ~~A subcontractor~~  
4 ~~electing to be exempt as a sole proprietor, partner, or~~  
5 ~~officer of a corporation shall provide a copy of his or her~~  
6 ~~certificate of election to the contractor.~~

7           (d)1. If a contractor becomes liable for the payment  
8 of compensation to the employees of a subcontractor who has  
9 failed to secure such payment in violation of s. 440.38, the  
10 contractor or other third-party payor shall be entitled to  
11 recover from the subcontractor all benefits paid or payable  
12 plus interest unless the contractor and subcontractor have  
13 agreed in writing that the contractor will provide coverage.

14           2. If a contractor or third-party payor becomes liable  
15 for the payment of compensation to the employee of a  
16 subcontractor who is actively engaged in the construction  
17 industry ~~and has elected to be exempt from the provisions of~~  
18 ~~this chapter, but whose election is invalid,~~ the contractor or  
19 third-party payor may recover from the independent contractor  
20 claimant, partnership, or corporation all benefits paid or  
21 payable plus interest, unless the contractor and the  
22 subcontractor have agreed in writing that the contractor will  
23 provide coverage.

24           (e) A subcontractor is not liable for the payment of  
25 compensation to the employees of another subcontractor on such  
26 contract work and is not protected by the  
27 exclusiveness-of-liability provisions of s. 440.11 from action  
28 at law or in admiralty on account of injury of such employee  
29 of another subcontractor.

30           (f) If an employer willfully fails to secure  
31 compensation as required by this chapter, the division shall

1 may assess against the employer a penalty not to exceed \$5,000  
2 for each employee of that employer who is classified by the  
3 employer as an independent contractor but who is found by the  
4 division or a judge of compensation claims to not meet the  
5 criteria for an independent contractor that are set forth in  
6 s. 440.02.

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

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

12 2. The independent contractor provides the general  
13 contractor with a valid certificate of workers' compensation  
14 insurance ~~or a valid certificate of exemption issued by the~~  
15 ~~division.~~

16  
17 A sole proprietor, independent contractor, partner, or officer  
18 of a corporation who elects exemption from this chapter by  
19 filing a certificate of election under s. 440.05 may not  
20 recover benefits or compensation under this chapter.

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

23 440.107 Division powers to enforce employer compliance  
24 with coverage requirements.--

25 (1) Whenever the division determines that an employer  
26 who is required to secure the payment to his or her employees  
27 of the compensation provided for by this chapter has failed to  
28 do so, such failure shall be deemed an immediate serious  
29 danger to public health, safety, or welfare sufficient to  
30 justify service by the division of a stop-work order on the  
31 employer, requiring the cessation of all business operations

1 at the place of employment or job site. The order shall take  
2 effect upon the date of service upon the employer, unless the  
3 employer provides evidence satisfactory to the division of  
4 having secured any necessary insurance or self-insurance and  
5 pays a civil penalty to the division, to be deposited by the  
6 division into the Workers' Compensation Administration Trust  
7 Fund, in the amount of \$100 per day for each day the employer  
8 was not in compliance with this chapter. If the division does  
9 not issue a stop-work order, the division shall assess a civil  
10 penalty against the employer, payable to the division, to be  
11 deposited by the division into the Workers' Compensation  
12 Administration Trust Fund, in an amount of \$200.00 per day for  
13 each day the employer was not in compliance with this chapter.

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

19 (a) Three times ~~Twice~~ the amount the employer would  
20 have paid during periods it illegally failed to secure payment  
21 of compensation in the preceding 3-year period based on the  
22 employer's payroll during the preceding 3-year period; or

23 (b) One thousand dollars, whichever is greater.  
24

25 Any penalty assessed under this subsection is due within 30  
26 days after the date on which the employer is notified, except  
27 that, if the division has posted a stop-work order or obtained  
28 injunctive relief against the employer, payment is due, in  
29 addition to those conditions set forth in this section, as a  
30 condition to relief from a stop-work order or an injunction.  
31

1 Interest shall accrue on amounts not paid when due at the rate  
2 of 1 percent per month.

3 Section 7. Paragraph (f) is added to subsection (2) of  
4 section 440.13, Florida Statutes, and subsections (4) and (5)  
5 of said section are amended, to read:

6 440.13 Medical services and supplies; penalty for  
7 violations; limitations.--

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

9 (f) If the employee is not enrolled in a managed care  
10 arrangement and requests alternative medical care, and the  
11 request is denied by the carrier, the employee must establish  
12 by clear and convincing evidence that the alternative medical  
13 care in the same or another specialty is medically necessary.  
14 Alternative medical care for employees enrolled in a managed  
15 care arrangement shall be pursuant to such managed care  
16 arrangement.

17 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
18 DIVISION.--

19 (a) Any health care provider providing necessary  
20 remedial treatment, care, or attendance to any injured worker  
21 shall submit treatment reports to the carrier in a format  
22 prescribed by the division. A claim for medical or surgical  
23 treatment is not valid or enforceable against such employer or  
24 employee, unless, by the close of the third business day  
25 following the first treatment, the physician providing the  
26 treatment furnishes to the employer or carrier a preliminary  
27 notice of the injury and treatment on forms prescribed by the  
28 division and, within 15 days thereafter, furnishes to the  
29 employer or carrier a complete report, and subsequent thereto  
30 furnishes progress reports, if requested by the employer or  
31 insurance carrier, at intervals of not less than 3 weeks apart

1 or at less frequent intervals if requested on forms prescribed  
2 by the division.

3 (b) Each medical report or bill obtained or received  
4 by the employer, the carrier, or the injured employee, or the  
5 attorney for the employer, carrier, or injured employee, with  
6 respect to the remedial treatment or care of the injured  
7 employee, including any report of an examination, diagnosis,  
8 or disability evaluation, must be filed with the Division of  
9 Workers' Compensation pursuant to rules adopted by the  
10 division. The health care provider shall also furnish to the  
11 injured employee or to his or her attorney, on demand, a copy  
12 of his or her office chart, records, and reports, and may  
13 charge the injured employee an amount authorized by the  
14 division for the copies. Each such health care provider shall  
15 provide to the division any additional information about the  
16 remedial treatment, care, and attendance that the division  
17 reasonably requests.

18 (c) It is the policy for the administration of the  
19 workers' compensation system that there be reasonable access  
20 to medical information by all parties to facilitate the  
21 self-executing features of the law. Notwithstanding the  
22 limitations in s. 455.241 and subject to the limitations in s.  
23 381.004, upon the request of the employer, the carrier, or the  
24 attorney for either of them, the medical records of an injured  
25 employee must be furnished to those persons and the medical  
26 condition of the injured employee must be discussed with those  
27 persons, if the records and the discussions are restricted to  
28 conditions relating to the workplace injury. Any such  
29 discussions may be held before or after the filing of a claim  
30 without the knowledge, consent, or presence of any other party  
31 or his or her agent or representative. A health care provider

1 who willfully refuses to provide medical records or to discuss  
2 the medical condition of the injured employee, after a  
3 reasonable request is made for such information pursuant to  
4 this subsection, shall be subject by the division to one or  
5 more of the penalties set forth in paragraph (8)(b).

6 For purposes of this section, "discussion" means the  
7 free interchange of ideas, facts, and findings among the  
8 parties and health care providers designed to aid the parties  
9 in reaching conclusions that will enable them to carry out  
10 their legal obligations and responsibilities.

11 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

12 (a) In any dispute concerning overutilization, medical  
13 benefits, compensability, or disability under this chapter,  
14 the carrier or the employee may select an independent medical  
15 examiner. The examiner may be a health care provider treating  
16 or providing other care to the employee. An independent  
17 medical examiner may not render an opinion outside his or her  
18 area of expertise, as demonstrated by licensure and applicable  
19 practice parameters.

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

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

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

28 3. The examiner is unavailable due to injury, death,  
29 or relocation outside a reasonably accessible geographic area;  
30 or

31 4. The parties agree to an alternate examiner.

1  
2 Any party may request, or a judge of compensation claims may  
3 require, designation of a division medical advisor as an  
4 independent medical examiner. The opinion of the advisors  
5 acting as examiners shall not be afforded the presumption set  
6 forth in paragraph (9)(c).

7 (c) The carrier may, at its election, contact the  
8 claimant directly to schedule a reasonable time for an  
9 independent medical examination when the carrier elects to  
10 request such an examination. The carrier must confirm the  
11 scheduling agreement in writing within 5 days and notify  
12 claimant's counsel, if any, at least 7 days before the date  
13 upon which the independent medical examination is scheduled to  
14 occur. An attorney representing a claimant is not authorized  
15 to schedule independent medical evaluations under this  
16 subsection. Nothing in this paragraph prohibits the attorney  
17 from scheduling an examination with an independent medical  
18 examiner selected by the employee.

19 (d) Each party shall be responsible for any costs  
20 incurred for an independent medical examination. An injured  
21 employee may recover the costs incurred for an independent  
22 medical examination if the injured employee is successful in  
23 the prosecution of a claim against the carrier and the  
24 independent medical examination was directly relevant to the  
25 success of the claim.

26 (e)~~(d)~~ If the employee, without good cause, fails to  
27 appear for the independent medical examination requested by  
28 the carrier ~~without good cause~~ and fails to advise the  
29 physician at least 24 hours before the scheduled date for the  
30 examination that he or she cannot appear, the employee is  
31 barred from recovering compensation for any period during

1 which he or she has refused to submit to such examination.  
2 Further, the employee shall reimburse the carrier 50 percent  
3 of the physician's cancellation or no-show fee for such  
4 examination unless the carrier that schedules the examination  
5 fails to timely provide to the employee a written confirmation  
6 of the date of the examination pursuant to paragraph (c) which  
7 includes an explanation of why he or she failed to appear. The  
8 employee may appeal to a judge of compensation claims for  
9 reimbursement when the carrier withholds payment in excess of  
10 the authority granted by this section.

11 (f)~~(e)~~ No medical opinion other than the opinion of a  
12 medical advisor appointed by the judge of compensation claims  
13 or division, an independent medical examiner, or an authorized  
14 treating provider is admissible in proceedings before the  
15 judges of compensation claims.

16 (g)~~(f)~~ Attorney's fees incurred by an injured employee  
17 in connection with delay of or opposition to an independent  
18 medical examination, including, but not limited to, motions  
19 for protective orders, are not recoverable under this chapter.

20 Section 8. Subsections (1), (2), (10), and (15) of  
21 section 440.134, Florida Statutes, are amended, and subsection  
22 (25) is added to said section, to read:

23 440.134 Workers' compensation managed care  
24 arrangement.--

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

26 (a) "Agency" means the Agency for Health Care  
27 Administration.

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



1           (c) "Certified case manager" means an individual who  
2 is responsible for the timely coordination of quality health  
3 care services to meet an individual's specific health care  
4 needs in a cost-effective manner.

5           ~~(d)(b)~~ "Complaint" means any dissatisfaction expressed  
6 by an injured worker concerning an insurer's workers'  
7 compensation managed care arrangement.

8           ~~(e)(c)~~ "Emergency care" means medical services as  
9 defined in chapter 395.

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

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

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

23           ~~(i)(e)~~ "Insurer" means an insurance carrier,  
24 self-insurance fund, assessable mutual insurer, or  
25 individually self-insured employer.

26           ~~(j)(i)~~ "Medical care coordinator" means a primary care  
27 provider within a provider network who is responsible for  
28 managing the medical care of an injured worker including  
29 determining other health care providers and health care  
30 facilities to which the injured employee will be referred for  
31 evaluation or treatment. A medical care coordinator shall be a

1 physician licensed under chapter 458 or an osteopathic  
2 physician licensed under chapter 459.

3 (k) "Primary care provider" means, except in the case  
4 of emergency treatment, the initial treating physician and,  
5 when appropriate, continuing treating physician, who may be a  
6 family practitioner, general practitioner, or internist  
7 physician licensed under chapter 458; a family practitioner,  
8 general practitioner, or internist osteopathic physician  
9 licensed under chapter 459; a chiropractor licensed under  
10 chapter 460; a podiatrist licensed under chapter 461; an  
11 optometrist licensed under chapter 463; or a dentist licensed  
12 under chapter 466.

13 (l)~~(j)~~ "Provider network" means a comprehensive panel  
14 of health care providers and health care facilities who have  
15 contracted directly or indirectly with an insurer to provide  
16 appropriate remedial treatment, care, and attendance to  
17 injured workers in accordance with this chapter.

18 (m)~~(f)~~ "Service area" means the agency-approved  
19 geographic area within which an insurer is authorized to offer  
20 a workers' compensation managed care arrangement.

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

1           (2)(a) The agency shall, beginning April 1, 1994,  
2 authorize an insurer to offer or utilize a workers'  
3 compensation managed care arrangement after the insurer files  
4 a completed application along with the payment of a \$1,000  
5 application fee, and upon the agency's being satisfied that  
6 the applicant has the ability to provide quality of care  
7 consistent with the prevailing professional standards of care  
8 and the insurer and its workers' compensation managed care  
9 arrangement otherwise meets the requirements of this section.  
10 Effective April 1, 1994, no insurer may offer or utilize a  
11 managed care arrangement without such authorization. The  
12 authorization, unless sooner suspended or revoked, shall  
13 automatically expire 2 years after the date of issuance unless  
14 renewed by the insurer. The authorization shall be renewed  
15 upon application for renewal and payment of a renewal fee of  
16 \$1,000, provided that the insurer is in compliance with the  
17 requirements of this section and any rules adopted hereunder.  
18 An application for renewal of the authorization shall be made  
19 90 days prior to expiration of the authorization, on forms  
20 provided by the agency. The renewal application shall not  
21 require the resubmission of any documents previously filed  
22 with the agency if such documents have remained valid and  
23 unchanged since their original filing.

24           (b) Effective January 1, 1997, the employer shall,  
25 subject to the limitations specified elsewhere in this  
26 chapter, furnish to the employee solely through managed care  
27 arrangements such medically necessary remedial treatment,  
28 care, and attendance for such period as the nature of the  
29 injury or the process of recovery requires.

30           Notwithstanding this subsection, employers who  
31 self-insure pursuant to s. 440.38 may opt out of mandatory

1 managed care arrangements and this section by providing such  
2 medically necessary remedial treatment, care, and attendance  
3 for such periods as the nature of the injury or process of  
4 recovery requires, as specified by s. 440.13. Nothing in this  
5 section shall be construed to prevent an employer who has  
6 self-insured pursuant to s. 440.38 from using managed care  
7 arrangements to provide treatment to such employer's employees  
8 if the employer so chooses.

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

12 (a) The mechanism for assuring that covered employees  
13 receive all initial covered services from a primary care  
14 provider participating in the provider network, except for  
15 emergency care.

16 (b) The mechanism for assuring that all continuing  
17 covered services be received from the same primary care  
18 provider participating in the provider network that provided  
19 the initial covered services, except when services from  
20 another provider are authorized by the medical care  
21 coordinator or certified case manager pursuant to paragraph

22 (d).

23 (c) The policies and procedures for allowing an  
24 employee one change to another provider within the same  
25 specialty and provider network as the authorized treating  
26 physician during the course of treatment for a work-related  
27 injury, if a request is made to the medical care coordinator  
28 or certified case manager by the employee; and requiring that  
29 special provision be made for more than one such referral  
30 through the arrangement's grievance procedures.

31

1           (d) The process for assuring that all referrals  
2 authorized by a medical care coordinator or certified case  
3 manager are made to the participating network providers,  
4 unless medically necessary treatment, care, and attendance are  
5 not available and accessible to the injured worker in the  
6 provider network.

7  
8 The division shall establish by rule the minimum  
9 qualifications to be designated as a certified case manager.  
10 Until the division adopts such rule, a registered nurse  
11 licensed under chapter 464 or a graduate of a medical school  
12 accredited by the American Medical Association, who has had at  
13 least one year of experience as a case manager in workers'  
14 compensation or a similar environment shall be qualified to  
15 perform the duties of a certified case manager.

16           (15)(a) A workers' compensation managed care  
17 arrangement must have and use procedures for hearing  
18 complaints and resolving written grievances from injured  
19 workers and health care providers. The procedures must be  
20 aimed at mutual agreement for settlement and may include  
21 arbitration procedures. Procedures provided herein are in  
22 addition to other procedures contained in this chapter.

23           (b) The grievance procedure must be described in  
24 writing and provided to the affected workers and health care  
25 providers.

26           (c) Informal grievances shall be initiated and  
27 concluded within 7 calendar days unless the parties and the  
28 managed care arrangement mutually agree to an extension. The  
29 7-day period shall commence upon telephone or personal contact  
30 by the employee, provider, the agency, or the division. If the  
31 informal grievance remains unresolved, the managed care

1 arrangement shall notify the party of the result in writing  
2 and advise the party of the right to initiate a formal  
3 grievance. The written notification shall include the name,  
4 address, and telephone number of the contact person  
5 responsible for initiating the formal grievance. In addition,  
6 the managed care arrangement shall advise the employee to  
7 contact the Employee Assistance and Ombudsman Office for  
8 additional information on rights and responsibilities and the  
9 dispute resolution process under the Florida Workers'  
10 Compensation Law.

11 (d) In order to ensure that there are no undue delays  
12 in the dispute resolution process, the managed care grievance  
13 coordinator shall, within 3 business days, forward a copy of  
14 the formal grievance to the division's Employee Assistance and  
15 Ombudsman Office. For purposes of this paragraph, the address  
16 of the Employee Assistance and Ombudsman Office shall be Post  
17 Office Box 8010, Tallahassee, Florida 32314-8010. Formal  
18 grievances shall be concluded within 30 days after receipt by  
19 the managed care arrangement of the grievance unless the  
20 employee or provider and the managed care arrangement mutually  
21 agree to an extension. If the grievance involves the  
22 collection of information outside the service area, the  
23 managed care arrangement shall have an additional 15 calendar  
24 days to process the formal grievance. The managed care  
25 arrangement shall notify the employee in writing that  
26 additional information is required to complete review of the  
27 grievance and that a maximum of 45 days will be allowed for  
28 such review. Within 5 business days after receiving the  
29 grievance, the managed care arrangement shall notify the party  
30 of such requirements in writing.

31

1       (e) The managed care arrangement shall provide written  
2 notice to its employees and providers of the right to proceed  
3 under s. 440.191 with the division, upon completion of the  
4 formal grievance procedure if the issues are not resolved to  
5 the satisfaction of both parties. The managed care arrangement  
6 shall provide a copy of the final decision letter from the  
7 managed care arrangement regarding the grievance to the  
8 employer, the carrier, and the division on upon request.

9       ~~(f)(c)~~ At the time the workers' compensation managed  
10 care arrangement is implemented, the insurer must provide  
11 detailed information to workers and health care providers  
12 describing how a grievance may be registered with the insurer.

13       (g)(d) Grievances must be considered in a timely  
14 manner and must be transmitted to appropriate decisionmakers  
15 who have the authority to fully investigate the issue and take  
16 corrective action.

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

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

21       (j)(g) The insurer must report annually, no later than  
22 March 31, to the agency regarding its grievance procedure  
23 activities for the prior calendar year. The report must be in  
24 a format prescribed by the agency and must contain the number  
25 of grievances filed in the past year and a summary of the  
26 subject, nature, and resolution of such grievances.

27       (25) Injuries which require medical treatment for  
28 which charges will be incurred, whether or not they are  
29 reported to the carrier, but which do not disable the employee  
30 for more than 7 days as a result of the injury shall not be  
31

1 used by the Agency for Health Care Administration in  
2 determining insurer compliance with this section.

3 Section 9. Subsection (1) of section 440.14, Florida  
4 Statutes, is amended to read:

5 440.14 Determination of pay.--

6 (1) Except as otherwise provided in this chapter, the  
7 average weekly wages of the injured employee at the time of  
8 the injury shall be taken as the basis upon which to compute  
9 compensation and shall be determined, subject to the  
10 limitations of s. 440.12(2), as follows:

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

26 (b) If the injured employee has not worked in such  
27 employment during ~~substantially the whole of 13~~ consecutive  
28 weeks immediately preceding the injury, the wages of a similar  
29 employee in the same employment who has worked substantially  
30 the whole of such 13 consecutive weeks shall be used in making  
31 the determination under the preceding paragraph.



1           (c) If an employee is a seasonal worker and the  
2 foregoing method cannot be fairly applied in determining the  
3 average weekly wage, then the employee may use, instead of the  
4 13 weeks immediately preceding the injury, the calendar year  
5 or the 52 weeks immediately preceding the injury. The employee  
6 will have the burden of proving that this method will be more  
7 reasonable and fairer than the method set forth in paragraphs  
8 (a) and (b) and, further, must document prior earnings with  
9 W-2 forms, written wage statements, or income tax returns. The  
10 employer shall have 30 days following the receipt of this  
11 written proof to adjust the compensation rate, including the  
12 making of any additional payment due for prior weekly  
13 payments, based on the lower rate compensation.

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

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

23           ~~(f) If it established that the injured employee was a~~  
24 ~~part-time worker at the time of the injury, that she or he had~~  
25 ~~adopted part-time employment as a customary practice, and that~~  
26 ~~under normal working conditions she or he probably would have~~  
27 ~~remained a part-time worker during the period of disability,~~  
28 ~~these factors shall be considered in arriving at her or his~~  
29 ~~average weekly wages. For the purpose of this paragraph, the~~  
30 ~~term "part-time worker" means an individual who customarily~~

31

1 ~~works less than the full-time hours or full-time workweek of a~~  
2 ~~similar employee in the same employment.~~

3 (f)~~(g)~~ If compensation is due for a fractional part of  
4 the week, the compensation for such fractional part shall be  
5 determined by dividing the weekly compensation rate by the  
6 number of days employed per week to compute the amount due for  
7 each day.

8 (g) Any issue relating to average weekly wages shall  
9 not be subject to attorney's fees. If an attorney is  
10 necessary, the employee shall be represented by an attorney as  
11 provided in s. 440.191.

12 (h) If the employee's employment has been irregular or  
13 the employee has lost time from work immediately preceding the  
14 injury because of illness, weather, or any other cause beyond  
15 the control of the employee, the employee's actual wages  
16 earned shall be used.

17 Section 10. Subsections (1), (2), (3), and (4) and  
18 paragraph (a) of subsection (10) of section 440.15, Florida  
19 Statutes, are amended to read:

20 440.15 Compensation for disability.--Compensation for  
21 disability shall be paid to the employee, subject to the  
22 limits provided in s. 440.12(2), as follows:

23 (1) PERMANENT TOTAL DISABILITY.--

24 (a) In case of total disability adjudged to be  
25 permanent, 66 2/3 percent of the average weekly wages shall  
26 be paid to the employee during the continuance of such total  
27 disability.

28 (b) Only a catastrophic injury as defined in s. 440.02  
29 shall, in the absence of conclusive proof of a substantial  
30 earning capacity, constitute permanent total disability. Only  
31 claimants with catastrophic injuries or any other compensable

1 injury of a nature and severity that prevents the employee  
2 from being able to perform his or her prior work, or any work  
3 which is available in substantial numbers within the national  
4 economy, are eligible for permanent total benefits. If the  
5 employee is engaged in, or is physically capable of engaging  
6 in, any gainful employment, including sheltered employment,  
7 the employee shall not be entitled to permanent total  
8 disability. The burden shall be on the employee to establish  
9 that he or she is not able to perform, due to physical  
10 limitations, at least part-time sedentary work available  
11 within a 100 mile radius of the employee's residence. In no  
12 other case may permanent total disability be awarded.

13 (c) In cases of permanent total disability resulting  
14 from injuries that occurred prior to July 1, 1955, such  
15 payments shall not be made in excess of 700 weeks.

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

27 2. Entitlement to permanent total disability payments  
28 shall cease at age 70.

29 (e)1. The employer's or carrier's right to conduct  
30 vocational evaluations or testing pursuant to s. 440.491  
31 continues even after the employee has been accepted or

1 adjudicated as entitled to compensation under this chapter.  
2 This right includes, but is not limited to, instances in which  
3 such evaluations or tests are recommended by a treating  
4 physician or independent medical-examination physician,  
5 instances warranted by a change in the employee's medical  
6 condition, or instances in which the employee appears to be  
7 making appropriate progress in recuperation. This right may  
8 not be exercised more than once every calendar year.

9         2. The carrier must confirm the scheduling of the  
10 vocational evaluation or testing in writing, and must notify  
11 employee's counsel, if any, at least 7 days before the date on  
12 which vocational evaluation or testing is scheduled to occur.

13         3. Pursuant to an order of the judge of compensation  
14 claims, the employer or carrier may withhold payment of  
15 benefits for permanent total disability or supplements for any  
16 period during which the employee willfully fails or refuses to  
17 appear without good cause for the scheduled vocational  
18 evaluation or testing.

19         (f)1. If permanent total disability results from  
20 injuries that occurred subsequent to June 30, 1955, and for  
21 which the liability of the employer for compensation has not  
22 been discharged under s. 440.20(12), the injured employee  
23 shall receive additional weekly compensation benefits equal to  
24 5 percent of her or his weekly compensation rate, as  
25 established pursuant to the law in effect on the date of her  
26 or his injury, multiplied by the number of calendar years  
27 since the date of injury. The weekly compensation payable and  
28 the additional benefits payable under this paragraph, when  
29 combined, may not exceed the maximum weekly compensation rate  
30 in effect at the time of payment as determined pursuant to s.  
31 440.12(2). Entitlement to these supplemental payments shall

1 cease at age 62 if the employee is eligible for social  
2 security benefits under 42 U.S.C. ss. 402 and 423, whether or  
3 not the employee has applied for such benefits. These  
4 supplemental benefits shall be paid by the division out of the  
5 Workers' Compensation Administration Trust Fund when the  
6 injury occurred subsequent to June 30, 1955, and before July  
7 1, 1984. These supplemental benefits shall be paid by the  
8 employer when the injury occurred on or after July 1, 1984.  
9 Supplemental benefits are not payable for any period prior to  
10 October 1, 1974.

11 2.a. The division shall provide by rule for the  
12 periodic reporting to the division of all earnings of any  
13 nature and social security income by the injured employee  
14 entitled to or claiming additional compensation under  
15 subparagraph 1. Neither the division nor the employer or  
16 carrier shall make any payment of those additional benefits  
17 provided by subparagraph 1. for any period during which the  
18 employee willfully fails or refuses to report upon request by  
19 the division in the manner prescribed by such rules.

20 b. The division shall provide by rule for the periodic  
21 reporting to the employer or carrier of all earnings of any  
22 nature and social security income by the injured employee  
23 entitled to or claiming benefits for permanent total  
24 disability. The employer or carrier is not required to make  
25 any payment of benefits for permanent total disability for any  
26 period during which the employee willfully fails or refuses to  
27 report upon request by the employer or carrier in the manner  
28 prescribed by such rules or if any employee who is receiving  
29 permanent total disability benefits refuses to apply for or  
30 cooperate with the employer or carrier in applying for social  
31 security benefits.

1           3. When an injured employee receives a full or partial  
2 lump-sum advance of the employee's permanent total disability  
3 compensation benefits, the employee's benefits under this  
4 paragraph shall be computed on the employee's weekly  
5 compensation rate as reduced by the lump-sum advance.

6           (2) TEMPORARY TOTAL DISABILITY.--

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

17           (b) Notwithstanding the provisions of paragraph (a),  
18 an employee who has sustained the loss of an arm, leg, hand,  
19 or foot, has been rendered a paraplegic, paraparetic,  
20 quadriplegic, or quadriparetic, or has lost the sight of both  
21 eyes shall be paid temporary total disability of 80 percent of  
22 her or his average weekly wage. The increased temporary total  
23 disability compensation provided for in this paragraph must  
24 not extend beyond 6 months from the date of the accident. The  
25 compensation provided by this paragraph is not subject to the  
26 limits provided in s. 440.12(2), but instead is subject to a  
27 maximum weekly compensation rate of \$700. If, at the  
28 conclusion of this period of increased temporary total  
29 disability compensation, the employee is still temporarily  
30 totally disabled, the employee shall continue to receive  
31 temporary total disability compensation as set forth in

1 paragraphs (a) and (c). The period of time the employee has  
2 received this increased compensation will be counted as part  
3 of, and not in addition to, the maximum periods of time for  
4 which the employee is entitled to compensation under paragraph  
5 (a) but not paragraph (c).

6 (c) Temporary total disability benefits paid pursuant  
7 to this subsection shall include such period as may be  
8 reasonably necessary for training in the use of artificial  
9 members and appliances, and shall include such period as the  
10 employee may be receiving training and education under a  
11 program pursuant to s. 440.49(1). Notwithstanding s.  
12 440.02(8), the date of maximum medical improvement for  
13 purposes of paragraph (3)(b) shall be no earlier than the last  
14 day for which such temporary disability benefits are paid.

15 (d) The division shall, by rule, provide for the  
16 periodic reporting to the division, employer, or carrier of  
17 all earned income, including income from social security, by  
18 the injured employee who is entitled to or claiming benefits  
19 for temporary total disability. The employer or carrier is not  
20 required to make any payment of benefits for temporary total  
21 disability for any period during which the employee willfully  
22 fails or refuses to report upon request by the employer or  
23 carrier in the manner prescribed by the rules. The rule must  
24 require the claimant to personally sign the claim form and  
25 attest that she or he has reviewed, understands, and  
26 acknowledges the foregoing.

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

28 (a) Impairment benefits.--

29 1. In case of permanent impairment due to amputation,  
30 loss of 80 percent or more of vision of either eye, after  
31 correction, or serious facial or head disfigurement resulting

1 from an injury other than an injury entitling the injured  
2 worker to permanent total disability benefits pursuant to  
3 subsection (1), the following amounts shall be paid to the  
4 injured worker:

5 a. Two hundred and fifty dollars for each percent of  
6 permanent impairment of the body as a whole from 1 percent  
7 through 10 percent; and

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

11 ~~2.1.~~ Once the employee has reached the date of maximum  
12 medical improvement, impairment benefits are due and payable  
13 within 20 days after the carrier has knowledge of the  
14 impairment.

15 ~~3.2.~~ The three-member panel, in cooperation with the  
16 division, shall establish and use a uniform permanent  
17 impairment rating schedule. This schedule must be based on  
18 medically or scientifically demonstrable findings as well as  
19 the systems and criteria set forth in the American Medical  
20 Association's Guides to the Evaluation of Permanent  
21 Impairment; the Snellen Charts, published by American Medical  
22 Association Committee for Eye Injuries; and the Minnesota  
23 Department of Labor and Industry Disability Schedules. The  
24 schedule should be based upon objective findings. The schedule  
25 shall be more comprehensive than the AMA Guides to the  
26 Evaluation of Permanent Impairment and shall expand the areas  
27 already addressed and address additional areas not currently  
28 contained in the guides. On August 1, 1979, and pending the  
29 adoption, by rule, of a permanent schedule, Guides to the  
30 Evaluation of Permanent Impairment, copyright 1977, 1971,  
31 1988, by the American Medical Association, shall be the



1 temporary schedule and shall be used for the purposes hereof.  
2 For injuries after July 1, 1990, pending the adoption by  
3 division rule of a uniform disability rating schedule, the  
4 Minnesota Department of Labor and Industry Disability Schedule  
5 shall be used unless that schedule does not address an injury.  
6 In such case, the Guides to the Evaluation of Permanent  
7 Impairment by the American Medical Association shall be used.  
8 Determination of permanent impairment under this schedule must  
9 be made by a physician licensed under chapter 458, a doctor of  
10 osteopathic medicine licensed under chapters 458 and 459, a  
11 chiropractor licensed under chapter 460, a podiatrist licensed  
12 under chapter 461, an optometrist licensed under chapter 463,  
13 or a dentist licensed under chapter 466, as appropriate  
14 considering the nature of the injury. No other persons are  
15 authorized to render opinions regarding the existence of or  
16 the extent of permanent impairment.

17 ~~3. All impairment income benefits shall be based on an~~  
18 ~~impairment rating using the impairment schedule referred to in~~  
19 ~~subparagraph 2. Impairment income benefits are paid weekly at~~  
20 ~~the rate of 50 percent of the employee's average weekly~~  
21 ~~temporary total disability benefit not to exceed the maximum~~  
22 ~~weekly benefit under s. 440.12. An employee's entitlement to~~  
23 ~~impairment income benefits begins the day after the employee~~  
24 ~~reaches maximum medical improvement or the expiration of~~  
25 ~~temporary benefits, whichever occurs earlier, and continues~~  
26 ~~until the earlier of:~~

27 ~~a. The expiration of a period computed at the rate of~~  
28 ~~3 weeks for each percentage point of impairment; or~~

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

30 4. After the employee has been certified by a doctor  
31 as having reached maximum medical improvement or 6 weeks

1 before the expiration of temporary benefits, whichever occurs  
2 earlier, the certifying doctor shall evaluate the condition of  
3 the employee and assign an impairment rating, using the  
4 impairment schedule referred to in subparagraph 2.  
5 Compensation is not payable for the mental, psychological, or  
6 emotional injury arising out of depression from being out of  
7 work. If the certification and evaluation are performed by a  
8 doctor other than the employee's treating doctor, the  
9 certification and evaluation must be submitted to the treating  
10 doctor, and the treating doctor must indicate agreement or  
11 disagreement with the certification and evaluation. The  
12 certifying doctor shall issue a written report to the  
13 division, the employee, and the carrier certifying that  
14 maximum medical improvement has been reached, stating the  
15 impairment rating, and providing any other information  
16 required by the division. ~~If the employee has not been~~  
17 ~~certified as having reached maximum medical improvement before~~  
18 ~~the expiration of 102 weeks after the date temporary total~~  
19 ~~disability benefits begin to accrue, the carrier shall notify~~  
20 ~~the treating doctor of the requirements of this section.~~

21 5. During the period that wage-loss benefits are being  
22 paid, the carrier has the affirmative duty to determine at  
23 least annually whether any extended unemployment or  
24 underemployment is a direct result of the employee's  
25 impairment. To accomplish this purpose, the division may  
26 require periodic reports from the employee and the carrier,  
27 and it may, at the carrier's expense, require any physical or  
28 other examinations, vocational assessments, or other tests or  
29 diagnoses necessary to verify that the carrier is performing  
30 its duty. Not more than once in 12 calendar months, the  
31 employee and the carrier may each request that the division

1 review the status of the employee and determine whether the  
2 carrier has performed its duty with respect to whether the  
3 employee's unemployment or underemployment is a direct result  
4 of impairment from the compensable injury.~~The carrier shall~~  
5 ~~pay the employee impairment income benefits for a period based~~  
6 ~~on the impairment rating.~~

7 (b) Wage-loss Supplemental benefits.--

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

1 which when added to other earnings for such week does not  
2 exceed the employee's average weekly wage, and the balance in  
3 the same manner to subsequent weeks until fully allocated, but  
4 not to exceed 52 weeks from the week that the commission or a  
5 similar irregular payment was received.  
6 2. The amount determined to be the salary, wages, and  
7 other remunerations the employee is able to earn after  
8 reaching the date of maximum medical improvement shall in no  
9 case be less than the sum actually being earned by the  
10 employee, including earnings from sheltered employment. In the  
11 case of an employee who has not voluntarily limited his or her  
12 income or who has not failed to accept employment commensurate  
13 with his or her abilities or who was not terminated from  
14 employment due to his or her own misconduct, and who has made  
15 a good faith attempt to find employment where employment  
16 actually exists after attaining maximum medical improvement  
17 but remains unemployed, it shall be presumed that the salary,  
18 wages, and other remuneration the employee is able to earn was  
19 zero for each week that the employee made a good faith attempt  
20 to find employment within his or her physical and vocational  
21 capabilities. Wage-loss forms and job search reports shall be  
22 mailed to the employer, carrier, or servicing agent within 14  
23 days after the time benefits are due. Failure of an employee  
24 to timely request benefits and file the appropriate job search  
25 forms showing that he or she looked for a minimum of 5 jobs  
26 where employment was actually available in each biweekly  
27 period after the employee knew that a job search was required,  
28 whether he or she has been advised by the employer, carrier,  
29 servicing agent, or his or her attorney, shall result in  
30 benefits not being payable during the time the employee fails  
31 to timely file his or her request for wage-loss benefits and

1 the job search reports. However, beginning on the 13th week  
2 after the employee has attained maximum medical improvement,  
3 if an employee does not obtain and maintain employment, the  
4 employer may show that the salary, wages, and other  
5 remuneration the employee is able to earn is greater than zero  
6 by proving the existence of actual job openings within a  
7 reasonable geographical area which the employee is physically  
8 and vocationally capable of performing, in which case the  
9 amount the employee is able to earn may be deemed to be the  
10 amount that the employee could earn in such jobs. Such amount  
11 shall be applied against the next three biweekly payments.

12 3. An injured worker requesting wage-loss benefits for  
13 any period during which such worker was unemployed shall make  
14 reasonable and good faith efforts to obtain suitable gainful  
15 employment where employment actually exists, on a consistent  
16 basis. "Suitable gainful employment" means employment which is  
17 reasonably attainable in consideration of the individual's  
18 age, education, personal aptitudes, previous vocational  
19 experience, and physical abilities. For any such period, the  
20 employer may require the injured worker's request for  
21 wage-loss benefits to include verification of the injured  
22 worker's efforts to obtain suitable gainful employment, which  
23 verification shall be made on forms prescribed by the  
24 division. In determining whether the injured worker has made  
25 reasonable and good faith efforts to obtain suitable gainful  
26 employment, the judge of compensation claims shall consider  
27 the availability of suitable employment in the area of the  
28 injured worker's residence, the injured worker's access to  
29 transportation, and the effect of the injured worker's  
30 physical impairment upon his or her ability to conduct job  
31 search activities. Whenever a wage-loss benefit may be

1 payable, the burden shall be on the employee to establish that  
2 any wage loss claimed is the result of the compensable injury.  
3 The employee also has the burden of showing that his or her  
4 inability to obtain employment or to earn as much as he or she  
5 earned at the time of his or her industrial accident is due to  
6 physical limitation related to his or her accident and not due  
7 to economic conditions, the unavailability of employment, or  
8 his or her own misconduct. Unless otherwise provided under  
9 this section, an injured worker requesting wage-loss benefits  
10 for any period during which he or she has been unemployed  
11 shall not be entitled to such benefits if the injured worker  
12 failed or refused to make reasonable and good faith efforts to  
13 obtain suitable gainful employment during such period.

14 4. The right to wage-loss benefits shall terminate  
15 upon the occurrence of the earliest of the following:

16 a. As of the end of 1-year period commencing at any  
17 time subsequent to the month when the injured employee reaches  
18 the date of maximum medical improvement, unless during such  
19 1-year period wage-loss benefits shall have been payable  
20 during at least 3 consecutive months. Such limitation period  
21 shall not be tolled or extended by the incarceration of the  
22 employee or by virtue of the employee becoming an inmate of a  
23 penal institution.

24 b. For injuries occurring on or before July 1, 1980,  
25 350 weeks after the injured employee reaches the date of  
26 maximum medical improvement.

27 c. For injuries occurring after July 1, 1980, but  
28 before July 1, 1990, 525 weeks after the injured employee  
29 reaches maximum medical improvement.

30  
31

1           d. For injuries occurring after June 30, 1997, the  
2 employee's eligibility for wage-loss benefits shall be  
3 determined according to the following schedule:

4           (I) Twenty-six weeks of eligibility for permanent  
5 impairment ratings up to and including 3 percent.

6           (II) Fifty-two weeks of eligibility for permanent  
7 impairment ratings greater than 3 and up to and including 6  
8 percent.

9           (III) Seventy-eight weeks of eligibility for permanent  
10 impairment ratings greater than 6 and up to and including 9  
11 percent.

12           (IV) One hundred and four weeks of eligibility for  
13 permanent impairment ratings greater than 9 and up to and  
14 including 12 percent.

15           (V) One hundred and twenty weeks of eligibility for  
16 permanent impairment ratings greater than 12 percent and up to  
17 and including 15 percent.

18           (VI) One hundred and forty weeks of eligibility for  
19 permanent impairment ratings greater than 15 percent and up to  
20 and including 18 percent.

21           (VII) One hundred and eighty weeks of eligibility for  
22 permanent impairment ratings greater than 18 and up to and  
23 including 21 percent.

24           (VIII) One hundred and ninety weeks of eligibility for  
25 permanent impairment ratings greater than 21 percent and up to  
26 and including 24 percent.

27           (IX) Two hundred weeks of eligibility for permanent  
28 impairment ratings greater than 24 percent.

29           5. Notwithstanding subparagraph 4., the right to  
30 wage-loss benefits shall terminate if there are three  
31 occurrences of any of the following incidents:

1           a. The employee voluntarily terminates his or her  
2 employment for any reason unrelated to his or her compensable  
3 injury.

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

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

10           d. The employee voluntarily limits his or her income.

11  
12 Each of the three occurrences must be in a different biweekly  
13 period. Additionally, for each of the three 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 shall terminate if  
17 an employee is convicted of conduct punishable under s.  
18 775.082 or s. 775.083 or is subjected to imprisonment under  
19 chapter 316 which directly affects the employee's ability to  
20 perform the activities of his or her usual or other  
21 appropriate employment. For purposes of this subparagraph,  
22 "convicted" means an adjudication of guilt by a court of  
23 competent jurisdiction, a plea of guilty or nolo contendere,  
24 or a jury verdict of guilty when adjudication of guilt is  
25 withheld and the accused is placed on probation.

26           7. The right to wage-loss benefits terminates at age  
27 70.

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

31



1           9. If an employee is entitled to both wage-loss  
2 benefits and social security retirement benefits under 42  
3 U.S.C., ss. 402 and 405, such social security retirement  
4 benefits shall be primary and the wage-loss benefits shall be  
5 supplemental only. The sum of both benefits shall not exceed  
6 the amount of wage-loss benefits which would otherwise be  
7 payable. For the purpose of termination of wage-loss benefits  
8 pursuant to sub-subparagraph 4.a., the term "payable" shall be  
9 construed to include payment of social security retirement  
10 benefits in lieu of wage-loss benefits.

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

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

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

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

24           ~~2. If an employee is not entitled to supplemental~~  
25 ~~benefits at the time of payment of the final weekly impairment~~  
26 ~~income benefit because the employee is earning at least 80~~  
27 ~~percent of the employee's average weekly wage, the employee~~  
28 ~~may become entitled to supplemental benefits at any time~~  
29 ~~within 1 year after the impairment income benefit period ends~~  
30 ~~if:~~

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

4           b. ~~The employee meets the other requirements of~~  
5 ~~subparagraph 1.; and~~

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

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

25           4. ~~During the period that impairment income benefits~~  
26 ~~or supplemental income benefits are being paid, the carrier~~  
27 ~~has the affirmative duty to determine at least annually~~  
28 ~~whether any extended unemployment or underemployment is a~~  
29 ~~direct result of the employee's impairment. To accomplish this~~  
30 ~~purpose, the division may require periodic reports from the~~  
31 ~~employee and the carrier, and it may, at the carrier's~~

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

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

23 (4) TEMPORARY PARTIAL DISABILITY.--

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

1 to 66 2/3 percent of the employee's average weekly wage at  
2 the time of injury. ~~In order to simplify the comparison of the~~  
3 ~~preinjury average weekly wage with the salary, wages, and~~  
4 ~~other remuneration the employee is able to earn, the division~~  
5 ~~may by rule provide for the modification of the weekly~~  
6 ~~comparison so as to coincide as closely as possible with the~~  
7 ~~injured worker's pay periods.~~The amount determined to be the  
8 salary, wages, and other remuneration the employee is able to  
9 earn shall in no case be less than the sum actually being  
10 earned by the employee, including earnings from sheltered  
11 employment.

12 (b) Whenever a temporary partial wage-loss benefit as  
13 set forth in paragraph (a) may be payable, the employee has  
14 the burden of establishing that any wage loss claimed is the  
15 result of the compensable injury. The employee shall also have  
16 the burden of showing that his or her inability to obtain  
17 employment or to earn as much as he or she earned at the time  
18 of his or her industrial accident is due to physical  
19 limitation related to his or her accident and not because of  
20 economic conditions, the unavailability of employment or his  
21 or her own misconduct. Wage-loss forms and job search reports  
22 shall be mailed to the employer, carrier, or servicing agent  
23 within 14 days after such benefits are due. Failure of an  
24 employee to timely request benefits and file the appropriate  
25 job search forms showing that he or she looked for a minimum  
26 of 5 jobs where employment was actually available in each  
27 biweekly period after the employee knew that a job search was  
28 required, whether he or she has been advised by the employer,  
29 carrier, servicing agent, or his or her attorney, shall result  
30 in benefits not being payable during the time that the  
31 employee fails to timely file his or her request for wage-loss

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

1 employee is physically and vocationally capable of performing,  
2 in which case the amount the employee is able to earn may be  
3 deemed to be the amount the judge of compensation claims finds  
4 that the employee could earn in such jobs. Such amount shall  
5 be applied against the next three biweekly payments.~~Such~~  
6 ~~benefits shall be paid during the continuance of such~~  
7 ~~disability, not to exceed a period of 104 weeks, as provided~~  
8 ~~by this subsection and subsection (2). Once the injured~~  
9 ~~employee reaches the maximum number of weeks, temporary~~  
10 ~~disability benefits cease and the injured worker's permanent~~  
11 ~~impairment must be determined.~~

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

15 (d) Temporary partial wage-loss benefits together with  
16 temporary total disability benefits shall be paid during the  
17 continuance of such disability, not to exceed a period of 200  
18 weeks. Once the employee reaches the maximum number of weeks,  
19 benefits shall cease and the injured worker's permanent  
20 impairment must be determined.

21 (10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER  
22 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE  
23 ACT.--

24 (a) Weekly compensation benefits payable under this  
25 chapter for disability resulting from injuries to an employee  
26 who becomes eligible for benefits under 42 U.S.C. s. 423 shall  
27 be reduced to an amount whereby the sum of such compensation  
28 benefits payable under this chapter and such total benefits  
29 otherwise payable for such period to the employee and her or  
30 his dependents, had such employee not been entitled to  
31 benefits under this chapter, under 42 U.S.C. ss. 402 or ~~and~~

1 423, does not exceed 80 percent of the employee's average  
2 weekly wage, including the additional average weekly  
3 compensation benefits allowed under paragraph (1)(f). However,  
4 this provision shall not operate to reduce an injured worker's  
5 benefits under this chapter to a greater extent than such  
6 benefits would have otherwise been reduced under 42 U.S.C. s.  
7 424(a). This reduction of compensation benefits is not  
8 applicable to any compensation benefits payable for any week  
9 subsequent to the week in which the injured worker reaches the  
10 age of 62 years.

11 Section 11. Paragraph (b) of subsection (2) of section  
12 440.191, Florida Statutes, is amended to read:

13 440.191 Employee Assistance and Ombudsman Office.--

14 (2)

15 (b) If at any time the employer or its carrier fails  
16 to provide benefits to which the employee believes she or he  
17 is entitled, the employee shall contact the office to request  
18 assistance in resolving the dispute. The employee shall  
19 simultaneously notify the employer, the employer's carrier,  
20 and the carrier's attorney, if known, in writing of the  
21 benefits to which the employee believes he or she is entitled  
22 and for which he or she is requesting the assistance of the  
23 office.The office shall investigate the dispute and shall  
24 attempt to facilitate an agreement between the employee and  
25 the employer or carrier. The employee, the employer, and the  
26 carrier shall cooperate with the office and shall timely  
27 provide the office with any documents or other information  
28 that it may require in connection with its efforts under this  
29 section.

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



1           440.192 Procedure for resolving benefit disputes.--  
2           (8) Within 14 days after receipt of a petition for  
3 benefits by certified mail, the carrier must either pay the  
4 requested benefits ~~without prejudice to its right to deny~~  
5 ~~within 120 days from receipt of the petition~~ or file a notice  
6 of denial with the division. The carrier must list all  
7 benefits requested but not paid and explain its justification  
8 for nonpayment in the notice of intent denial. ~~A carrier that~~  
9 ~~does not deny compensability in accordance with s. 440.20(4)~~  
10 ~~is deemed to have accepted the employee's injuries as~~  
11 ~~compensable, unless it can establish material facts relevant~~  
12 ~~to the issue of compensability that could not have been~~  
13 ~~discovered through reasonable investigation within the 120-day~~  
14 ~~period. The carrier shall provide copies of the notice to the~~  
15 ~~filing party, employer, and claimant by certified mail.~~

16           Section 13. Subsections (6) and (11) of section  
17 440.20, Florida Statutes, are amended to read:

18           440.20 Time for payment of compensation; penalties for  
19 late payment.--

20           (6) If any installment of compensation for death or  
21 dependency benefits, disability, permanent impairment, or wage  
22 loss payable without an award is not paid within 14 ~~7~~ days  
23 after it becomes due, as provided in subsection (2),  
24 subsection (3), or subsection (4), there shall be added to  
25 such unpaid installment a punitive penalty of an amount equal  
26 to 20 percent of the unpaid installment or \$5, which shall be  
27 paid at the same time as, but in addition to, such installment  
28 of compensation, unless notice is filed under subsection (4)  
29 or unless such nonpayment results from conditions over which  
30 the employer or carrier had no control. When any installment  
31 of compensation payable without an award has not been paid

1 within 14 7 days after it became due and the claimant  
2 concludes the prosecution of the claim before a judge of  
3 compensation claims without having specifically claimed  
4 additional compensation in the nature of a penalty under this  
5 section, the claimant will be deemed to have acknowledged  
6 that, owing to conditions over which the employer or carrier  
7 had no control, such installment could not be paid within the  
8 period prescribed for payment and to have waived the right to  
9 claim such penalty. However, during the course of a hearing,  
10 the judge of compensation claims shall on her or his own  
11 motion raise the question of whether such penalty should be  
12 awarded or excused. The division may assess without a hearing  
13 the punitive penalty against either the employer or the  
14 insurance carrier, depending upon who was at fault in causing  
15 the delay. The insurance policy cannot provide that this sum  
16 will be paid by the carrier if the division or the judge of  
17 compensation claims determines that the punitive penalty  
18 should be made by the employer rather than the carrier. Any  
19 additional installment of compensation paid by the carrier  
20 pursuant to this section shall be paid directly to the  
21 employee.

22 (11)(a) Upon joint petition of all interested parties,  
23 a lump-sum payment in exchange for the employer's or carrier's  
24 release from liability for future medical expenses, as well as  
25 future payments of compensation expenses and any other  
26 benefits provided under this chapter, shall be allowed at any  
27 time in any case in which the employer or carrier has filed a  
28 written notice of denial within 120 days after the date of the  
29 injury, and the judge of compensation claims ~~at a hearing to~~  
30 ~~consider the settlement proposal~~ finds a justiciable  
31 controversy as to legal or medical compensability of the

1 claimed injury or the alleged accident. The employer or  
2 carrier may not pay any attorney's fees on behalf of the  
3 claimant for any settlement under this section unless  
4 expressly authorized elsewhere in this chapter. Upon the joint  
5 petition of all interested parties and after giving due  
6 consideration to the interests of all interested parties, the  
7 judge of compensation claims may enter a compensation order  
8 approving and authorizing the discharge of the liability of  
9 the employer for compensation and remedial treatment, care,  
10 and attendance, as well as rehabilitation expenses, by the  
11 payment of a lump sum. Such a compensation order so entered  
12 upon joint petition of all interested parties is not subject  
13 to modification or review under s. 440.28. If the settlement  
14 proposal together with supporting evidence is not approved by  
15 the judge of compensation claims, it shall be considered void.  
16 Upon approval of a lump-sum settlement under this subsection,  
17 the judge of compensation claims shall send a report to the  
18 Chief Judge of the amount of the settlement and a statement of  
19 the nature of the controversy. The Chief Judge shall keep a  
20 record of all such reports filed by each judge of compensation  
21 claims and shall submit to the Legislature a summary of all  
22 such reports filed under this subsection annually by September  
23 15.

24 (b) Upon joint petition of all interested parties, a  
25 lump-sum payment in exchange for the employer's or carrier's  
26 release from liability for future medical expenses, as well as  
27 future payments of compensation and rehabilitation expenses,  
28 and any other benefits provided under this chapter, may be  
29 allowed at any time in any case after the injured employee has  
30 attained maximum medical improvement. When the claimant is  
31 represented by counsel, final approval of the lump-sum

1 settlement agreement, as provided for in a joint petition and  
2 stipulation, shall be approved by entry of an order within 7  
3 days after the filing of such joint petition and stipulation  
4 without a hearing, unless the judge of compensation claims  
5 determines, in his or her discretion, that additional  
6 testimony is needed before such settlement can be approved or  
7 disapproved and so notifies the parties. In hearings conducted  
8 for purposes of approving or disapproving a lump-sum  
9 settlement agreement, the judge of compensation claims shall  
10 allow any party to appear by telephone unless circumstances,  
11 in the judge's discretion, require live testimony and shall  
12 also give consideration to other means by which the economic  
13 burden on parties may be minimized.An employer or carrier may  
14 not pay any attorney's fees on behalf of the claimant for any  
15 settlement, unless expressly authorized elsewhere in this  
16 chapter. A compensation order so entered upon joint petition  
17 of all interested parties shall not be subject to modification  
18 or review under s. 440.28. However, a judge of compensation  
19 claims is not required to approve any award for lump-sum  
20 payment when it is determined by the judge of compensation  
21 claims that the payment being made is in excess of the value  
22 of benefits the claimant would be entitled to under this  
23 chapter. The judge of compensation claims shall make or cause  
24 to be made such investigations as she or he considers  
25 necessary, in each case in which the parties have stipulated  
26 that a proposed final settlement of liability of the employer  
27 for compensation shall not be subject to modification or  
28 review under s. 440.28, to determine whether such final  
29 disposition will definitely aid the rehabilitation of the  
30 injured worker or otherwise is clearly for the best interests  
31 of the person entitled to compensation and, in her or his

1 discretion, may have an investigation made by the  
2 Rehabilitation Section of the Division of Workers'  
3 Compensation. The joint petition and the report of any  
4 investigation so made will be deemed a part of the proceeding.  
5 An employer shall have the right to appear at any hearing  
6 pursuant to this subsection which relates to the discharge of  
7 such employer's liability and to present testimony at such  
8 hearing. The carrier shall provide reasonable notice to the  
9 employer of the time and date of any such hearing and inform  
10 the employer of her or his rights to appear and testify. When  
11 the claimant is represented by counsel or when the claimant  
12 and carrier or employer are represented by counsel, final  
13 approval of the lump-sum settlement agreement, as provided for  
14 in a joint petition and stipulation, shall be approved by  
15 entry of an order within 7 days after the filing of such joint  
16 petition and stipulation without a hearing, unless the judge  
17 of compensation claims determines, in her or his discretion,  
18 that additional testimony is needed before such settlement can  
19 be approved or disapproved and so notifies the parties. The  
20 probability of the death of the injured employee or other  
21 person entitled to compensation before the expiration of the  
22 period during which such person is entitled to compensation  
23 shall, in the absence of special circumstances making such  
24 course improper, be determined in accordance with the most  
25 recent United States Life Tables published by the National  
26 Office of Vital Statistics of the United States Department of  
27 Health and Human Services. The probability of the happening of  
28 any other contingency affecting the amount or duration of the  
29 compensation, except the possibility of the remarriage of a  
30 surviving spouse, shall be disregarded. As a condition of  
31 approving a lump-sum payment to a surviving spouse, the judge

1 of compensation claims, in the judge of compensation claims'  
2 discretion, may require security which will ensure that, in  
3 the event of the remarriage of such surviving spouse, any  
4 unaccrued future payments so paid may be recovered or recouped  
5 by the employer or carrier. Such applications shall be  
6 considered and determined in accordance with s. 440.25.

7 (c) This section applies to all claims that the  
8 parties have not previously settled, regardless of the date of  
9 accident.

10 Section 14. Section 440.34, Florida Statutes, is  
11 amended to read:

12 440.34 Attorney's fees; costs.--

13 (1) A fee, gratuity, or other consideration may not be  
14 paid for services rendered for a claimant in connection with  
15 any proceedings arising under this chapter, unless approved as  
16 reasonable by the judge of compensation claims or court having  
17 jurisdiction over such proceedings. Except as provided by this  
18 subsection, any attorney's fee approved by a judge of  
19 compensation claims for services rendered to a claimant must  
20 equal to 20 percent of the first \$5,000 of the amount of the  
21 benefits actually paid pursuant to an order or joint  
22 stipulation ~~secured~~, 15 percent of the next \$5,000 of the  
23 amount of the benefits actually paid pursuant to an order or a  
24 joint stipulation ~~secured~~, 10 percent of the remaining amount  
25 of the benefits actually paid pursuant to an order or a joint  
26 stipulation ~~secured~~ to be provided during the first 10 years  
27 after the date the claim is filed, and 5 percent of the  
28 benefits actually paid pursuant to an order or a joint  
29 stipulation ~~secured~~ after 10 years. ~~However, the judge of~~  
30 ~~compensation claims shall consider the following factors in~~  
31 ~~each case and may increase or decrease the attorney's fee if,~~

1 ~~in her or his judgment, the circumstances of the particular~~  
2 ~~case warrant such action:~~  
3       ~~(a) The time and labor required, the novelty and~~  
4 ~~difficulty of the questions involved, and the skill requisite~~  
5 ~~to perform the legal service properly.~~  
6       ~~(b) The fee customarily charged in the locality for~~  
7 ~~similar legal services.~~  
8       ~~(c) The amount involved in the controversy and the~~  
9 ~~benefits resulting to the claimant.~~  
10       ~~(d) The time limitation imposed by the claimant or the~~  
11 ~~circumstances.~~  
12       ~~(e) The experience, reputation, and ability of the~~  
13 ~~lawyer or lawyers performing services.~~  
14       ~~(f) The contingency or certainty of a fee.~~  
15       (2) Under no circumstances shall an attorney's fee be  
16 awarded except on a contingency basis. Calculation of attorney  
17 fees based on an hourly rate is prohibited.  
18       (3) No prejudgment or postjudgment interest shall be  
19 included in attorney fees awarded pursuant to this section.  
20       (4) The employee shall be given notice of the attorney  
21 fee hearing and shall have the right to testify at such  
22 hearing. The employee shall receive a copy of any stipulation  
23 or order awarding attorney fees.  
24       (5)~~(2)~~ In awarding a reasonable claimant's attorney's  
25 fee, the judge of compensation claims shall consider only  
26 those benefits to the claimant that the attorney is  
27 responsible pursuant to an order or joint stipulation for  
28 ~~securing~~. The amount, statutory basis, and type of benefits  
29 obtained through legal representation shall be listed on all  
30 attorney's fees awarded by the judge of compensation claims.  
31 For purposes of this section, the term "benefits paid secured"

1 means benefits obtained as a result of the claimant's  
2 attorney's legal services rendered in connection with the  
3 petition claim for benefits. However, such term does not  
4 include future medical benefits to be provided on any date  
5 more than 5 years after the date the petition claim is filed.

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

14 (a) Against whom she or he successfully asserts a  
15 petition claim for medical benefits only, of an amount of at  
16 least \$1,000, if the claimant has not filed or is not entitled  
17 to file at such time a petition claim for disability,  
18 permanent impairment, wage-loss, or death benefits, arising  
19 out of the same accident; or

20 (b) In any case in which the employer or carrier files  
21 a notice of denial, which notice denies the benefits  
22 sought, with the division and the injured person has employed  
23 an attorney in the successful prosecution of the petition,  
24 except on issues as to the average weekly wage claim; or

25 (c) In a proceeding in which a carrier or employer  
26 denies that an injury occurred for which compensation benefits  
27 are payable, and the claimant prevails on the issue of  
28 compensability; or

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

31



1 ~~In applying the factors set forth in subsection (1) to cases~~  
2 ~~arising under paragraphs (a), (b), (c), and (d), the judge of~~  
3 ~~compensation claims must only consider only such benefits and~~  
4 ~~the time reasonably spent in obtaining them as were secured~~  
5 ~~for the claimant within the scope of paragraphs (a), (b), (c),~~  
6 ~~and (d).~~

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

11 ~~(8)(5)~~ If any proceedings are had for review of any  
12 petition claim, award, or compensation order before any court,  
13 the court may award the injured employee or dependent an  
14 attorney's fee to be paid by the employer or carrier, in its  
15 discretion, which shall be paid as the court may direct when  
16 benefits have been awarded to the claimant pursuant to the  
17 appeal. In no event shall a fee be more than \$125 per hour.

18 ~~(9)(6)~~ A judge of compensation claims may not enter an  
19 order approving the contents of a retainer agreement that  
20 permits the escrowing of any portion of the employee's  
21 compensation until benefits have been secured.

22 Section 15. Section 440.594, Florida Statutes, is  
23 created to read:

24 440.594 Records and reports.--Each employer shall keep  
25 true and accurate work records, containing such information as  
26 the division may prescribe, for purposes of properly complying  
27 with the coverage requirements of this chapter. Such records  
28 shall be open to inspection and be subject to being copied by  
29 the division at any reasonable time and as often as may be  
30 necessary. The division may require from any employer any  
31 reports, with respect to persons employed by the employer,

1 deemed necessary for the effective administration of this  
2 chapter. Information revealing the employer's or individual's  
3 identity, obtained from the employer or from any individual  
4 pursuant to the administration of this chapter, shall be  
5 confidential and exempt from the provisions of s. 119.07(1),  
6 except to the extent necessary for the proper investigation to  
7 insure proper compliance with the coverage provisions of this  
8 chapter.

9           Section 16. Section 440.595, Florida Statutes, is  
10 created to read:

11           440.095 Oaths and witnesses.--In discharging the  
12 duties imposed by this chapter to ensure proper compliance  
13 with the coverage provisions of this chapter, the division may  
14 administer oaths and affirmations and issue subpoenas to  
15 compel the attendance of witnesses and the production of  
16 books, papers, correspondence, memoranda, and other records  
17 deemed necessary as evidence in connection with ensuring  
18 proper compliance with the coverage provisions of this  
19 chapter.

20           Section 17. 440.596, Florida Statutes, is created to  
21 read:

22           440.596 Florida Workers' Compensation Management  
23 Board.--

24           (1) A nonprofit corporation to be known as the  
25 "Florida Workers' Compensation Management Board, Incorporated"  
26 is hereby created. The board shall operate pursuant to a plan  
27 developed by the board of directors of the board and approved  
28 by the division. The board is not a state agency, board, or  
29 commission.

30           (2) The Legislature declares the purpose of the board  
31 is to provide management operations and services necessary for

1 the administration of the workers' compensation system under  
2 chapter 440 that are more efficiently performed by private  
3 enterprise. The Legislature finds that transferring most of  
4 the division's duties to the board will provide the state with  
5 the resources to undertake and focus on functions that are  
6 appropriate and within the purview of state government and  
7 that using private enterprise facilitates an efficient cost  
8 effective system that will more quickly respond to dynamic  
9 changes within the compensation system.

10 (3) The board shall consist of 9 members, 8 of which  
11 shall be appointed by the Governor. The Governor shall appoint  
12 4 members as representatives of labor interests and 4 members  
13 as representatives of employers. A ninth member shall be  
14 elected by a majority vote of the board of directors. Two  
15 members appointed as representatives of labor interests and  
16 two members appointed as representatives of management  
17 interests shall be appointed for two year terms. The remaining  
18 appointees shall serve for four year terms. Thereafter, all  
19 members shall serve for terms of 4 years, except any vacancy  
20 shall be filled by appointment for the remainder of the term.  
21 Members may be reappointed but may not serve for more than 2  
22 consecutive terms. All members shall have significant  
23 experience in the workers' compensation system, must not have  
24 an ownership or material financial interest in any entity  
25 receiving payments under the compensation system, and may not  
26 receive contracts from the board for services while serving on  
27 the board or within two years after serving on the board.

28 (4) Each member is accountable to the Governor for  
29 proper performance of his or her duties as a member of the  
30 board. The Governor may remove from office any member for  
31 malfeasance, misfeasance, neglect of duty, drunkenness,

1 incompetence, or permanent inability to perform official  
2 duties, or for pleading guilty or nolo contendere to, or  
3 having been adjudicated guilty of, a first degree misdemeanor  
4 or a felony.

5 (5) Members shall serve without salary, but shall be  
6 reimbursed for actual and necessary expenses incurred in the  
7 performance of his or her official duties as a member, in  
8 accordance with s. 112.061. Members shall not be subject to  
9 any liability under any theory of recovery without a showing  
10 of fraud or malice.

11 (6) Any moneys appropriated to the board for purposes  
12 of this section shall be administered by the board as provided  
13 in this subsection. On or before September 1, the board shall  
14 submit a plan of operation to the division for review. The  
15 plan shall provide for efficient administration and prompt  
16 processing of forms, efficient methods of data collection, and  
17 creation of alternative dispute resolution systems that will  
18 facilitate a self executing workers' compensation system. The  
19 plan may be amended at any time by the board or upon request  
20 by the department. The plan and any amendments to the plan are  
21 subject to approval by the department. The plan shall:

22 (a) Authorize the board to engage in the activities  
23 necessary or incidental to provide the management functions  
24 necessary for the operation of the workers' compensation  
25 system.

26 (b) Provide consulting services to the division and  
27 the department.

28 (c) Authorize the board to borrow money.

29 (d) Authorize the efficient processing of reports, and  
30 other reporting requirements required by law.

31

1       (e) Authorize the board to develop alternative dispute  
2 mechanisms, including funding of personnel, equipment, and  
3 facilities, that will enhance the expeditious resolution of  
4 conflicts between injured employees and the employer or  
5 carrier.

6       (f) Authorize the board to enter contractual  
7 arrangements with the state that will allow for the purchase  
8 or lease of surplus office equipment, computers, or data  
9 systems from the division or any other entity of the state,  
10 and that will allow for an efficient transition of functions  
11 from the division to operations by the board.

12       (g) Provide for annual reports to the department on  
13 expenditures and completion of plan objectives and include  
14 recommendations for future plan goals.

15       (h) Authorize the board to delegate, and enter  
16 contractual arrangements for administering and completing,  
17 board responsibilities.

18       (i) Provide for the processing and dissemination of  
19 payments approved by the division from the Special Disability  
20 Trust Fund.

21       (j) Provide for a retirement program for plan  
22 employees. The retirement program shall provide credit for  
23 years of service in working for the department.

24       (7)(a) The board shall employ a chief operating  
25 officer who shall conduct the daily operations of the board in  
26 accordance with policies established by the board and who  
27 shall otherwise implement board policy. The chief operating  
28 officer shall hire personnel according to policies adopted by  
29 the board to assist in completing the board's objectives.

30       (b) All personnel hired by the board, including the  
31 chief executive officer, are board employees who serve at the

1 pleasure of the board and are not subject to state employee  
2 hiring and termination requirements.  
3 (8) The board shall appoint a standing technical  
4 advisory committee to advise the board on the implications of  
5 data reporting requirements and recommend alternative  
6 reporting and processing requirements that will enhance plan  
7 efficiency. The technical advisory committee shall be  
8 appointed by the chief executive officer, with the concurrence  
9 of the board, and shall include representatives of insurance  
10 entities from group self-insurance funds authorized by s.  
11 624.462, assessable mutual insurers authorized under s.  
12 628.6011, and insurers licensed to write workers' compensation  
13 and employer's liability insurance in this state.

14 Section 18. Section 442.003, Florida Statutes, is  
15 amended to read:

16 442.003 Legislative intent.--It is the intent of the  
17 Legislature to enhance occupational safety and health in this  
18 state through the implementation and maintenance of policies,  
19 procedures, practices, rules, and standards that reduce the  
20 incidence of employee accidents, occupational diseases, and  
21 fatalities compensable under chapter 440. The Legislature  
22 further intends that the ~~Division of Safety of the~~ Department  
23 of Labor and Employment Security develop a means by which it  
24 can identify individual employers with a high frequency or  
25 severity of work-related injuries; conduct safety inspections  
26 of those employers; and assist those employers in the  
27 development and implementation of employee safety and health  
28 programs. In addition, it is the intent of the Legislature  
29 that the ~~Division of Safety of the~~ Department of Labor and  
30 Employment Security administer the provisions of this chapter;  
31 provide assistance to employers, employees, and insurance

1 carriers; and enforce the policies, rules, and standards set  
2 forth in this chapter.

3 Section 19. Section 442.014, Florida Statutes, is  
4 amended to read:

5 442.014 Division cooperation with Federal Government;  
6 exemption from division ~~of Safety~~ requirements.--

7 (1) The division shall cooperate with the Federal  
8 Government so that duplicate inspections will be avoided yet  
9 assure safe places of employment for the citizens of this  
10 state.

11 (2) Except as provided in this section, a private  
12 sector employer is not subject to the requirements of the  
13 division ~~of Safety~~ if:

14 (a) The employer is subject to the federal regulations  
15 in 29 C.F.R. ss. 1910 and 1926; and

16 (b) The employer has adopted and implemented a written  
17 safety program that conforms to the requirements of 29 C.F.R.  
18 ss. 1910 and 1926; and

19 (c) An employer with 20 or more full-time employees  
20 shall include provisions for a safety committee in the safety  
21 program. The safety committee must include employee  
22 representation and must meet at least once each calendar  
23 quarter. The employer must make adequate records of each  
24 meeting and maintain the records subject to inspections under  
25 subsection (3). The safety committee shall, if appropriate,  
26 make recommendations regarding improvements to the safety  
27 program and corrections of hazards affecting workplace safety;  
28 and

29 (d) The employer provides the division ~~of Safety~~ with  
30 a written statement that certifies compliance with this  
31 subsection.

1           (3) The division ~~of Safety~~ may enter at any reasonable  
2 time any place of employment for the purposes of verifying the  
3 accuracy of the written certification. If the division ~~of~~  
4 ~~Safety~~ determines that the employer has not complied with the  
5 requirements of subsection (2), the employer shall be subject  
6 to the rules of the division ~~of Safety~~ until the employer  
7 complies with subsection (2) and recertifies that fact to the  
8 division ~~of Safety~~.

9           (4) This section shall not restrict the division ~~of~~  
10 ~~Safety~~ from performing any duties pursuant to a written  
11 contract between the division ~~of Safety~~ and the Federal  
12 Occupational Safety and Health Administration (OSHA).

13           Section 20. Section 442.023, Florida Statutes, is  
14 amended to read:

15           442.023 Matters within jurisdiction of the division ~~of~~  
16 ~~Safety~~; false, fictitious, or fraudulent acts, statements, and  
17 representations prohibited; penalty; statute of  
18 limitations.--A person may not, in any matter within the  
19 jurisdiction of the division ~~of Safety of the Department of~~  
20 ~~Labor and Employment Security~~, knowingly and willfully falsify  
21 or conceal a material fact; make any false, fictitious, or  
22 fraudulent statement or representation; or make or use any  
23 false document, knowing the same to contain any false,  
24 fictitious, or fraudulent statement or entry. A person who  
25 violates this section commits a misdemeanor of the second  
26 degree, punishable as provided in s. 775.082 or s. 775.083.  
27 The statute of limitations for prosecution of an act committed  
28 in violation of this section is 5 years after the date the act  
29 was committed.

30           Section 21. Section 442.20, Florida Statutes, is  
31 amended to read:



1           442.20 Workplace safety.--

2           (1) ~~The division of Safety within the Department of~~  
3 ~~Labor and Employment Security~~ shall assist in making the  
4 workplace a safer place to work and decreasing the frequency  
5 and severity of on-the-job injuries.

6           (2) ~~The division of Safety~~ shall have the authority to  
7 adopt rules for the purpose of assuring safe working  
8 conditions for all workers by authorizing the enforcement of  
9 effective standards, assisting and encouraging employers to  
10 maintain safe working conditions, and by providing for  
11 education and training in the field of safety.

12           (3) The provisions of chapter 440 which pertain to  
13 workplace safety shall be applicable to the division of  
14 ~~Safety~~.

15           ~~(4) The administrative rules of the Department of~~  
16 ~~Labor and Employment Security pertaining to the function of~~  
17 ~~the Bureau of Industrial Safety and Health which are in effect~~  
18 ~~immediately before July 1, 1990, continue in effect as rules~~  
19 ~~of the Division of Safety until specifically amended by the~~  
20 ~~Department of Labor and Employment Security.~~

21           Section 22. Section 627.0915, Florida Statutes, is  
22 amended to read:

23           627.0915 Rate filings; workers' compensation,  
24 drug-free workplace, and safe employers.--The Department of  
25 Insurance shall approve rating plans for workers' compensation  
26 insurance that give specific identifiable consideration in the  
27 setting of rates to employers that either implement a  
28 drug-free workplace program pursuant to rules adopted by the  
29 Division of Workers' Compensation of the Department of Labor  
30 and Employment Security or implement a safety program approved  
31 by the division of ~~Safety~~ pursuant to rules adopted by the

1 ~~division of Safety of the Department of Labor and Employment~~  
2 ~~Security~~ or implement both a drug-free workplace program and a  
3 safety program. The plans must take effect January 1, 1994,  
4 must be actuarially sound, and must state the savings  
5 anticipated to result from such drug-testing and safety  
6 programs.

7 Section 23. Section 627.212, Florida Statutes, is  
8 amended to read:

9 627.212 Workplace safety program surcharge.--The  
10 department shall approve a rating plan for workers'  
11 compensation coverage insurance that provides for carriers  
12 voluntarily to impose a surcharge of no more than 10 percent  
13 on the premium of a policyholder or fund member if that  
14 policyholder or fund member has been identified by the  
15 Division of Workers' Compensation Safety of the Department of  
16 Labor and Employment Security as having been required to  
17 implement a safety program and having failed to establish or  
18 maintain, either in whole or in part, a safety program. The  
19 division shall adopt rules prescribing the criteria for the  
20 employee safety programs.

21 Section 24. Paragraph (b) of subsection (4) of section  
22 627.311, Florida Statutes, is amended to read:

23 627.311 Joint underwriters and joint reinsurers.--

24 (4)

25 (b) The operation of the plan shall be governed by a  
26 plan of operation that is prepared at the direction of the  
27 board of governors. The plan of operation may be changed at  
28 any time by the board of governors or upon request of the  
29 department. The plan of operation and all changes thereto are  
30 subject to the approval of the department. The plan of  
31 operation shall:

- 1           1. Authorize the board to engage in the activities  
2 necessary to implement this subsection, including, but not  
3 limited to, borrowing money.
- 4           2. Develop criteria for eligibility for coverage by  
5 the plan, including, but not limited to, documented rejection  
6 by at least two insurers which reasonably assures that  
7 insureds covered under the plan are unable to acquire coverage  
8 in the voluntary market. Any insured may voluntarily elect to  
9 accept coverage from an insurer for a premium equal to or  
10 greater than the plan premium if the insurer writing the  
11 coverage adheres to the provisions of s. 627.171.
- 12           3. Require notice from the agent to the insured at the  
13 time of the application for coverage that the application is  
14 for coverage with the plan and that coverage may be available  
15 through an insurer, group self-insurers' fund, commercial  
16 self-insurance fund, or assessable mutual insurer through  
17 another agent at a lower cost.
- 18           4. Establish programs to encourage insurers to provide  
19 coverage to applicants of the plan in the voluntary market and  
20 to insureds of the plan, including, but not limited to:
- 21           a. Establishing procedures for an insurer to use in  
22 notifying the plan of the insurer's desire to provide coverage  
23 to applicants to the plan or existing insureds of the plan and  
24 in describing the types of risks in which the insurer is  
25 interested. The description of the desired risks must be on a  
26 form developed by the plan.
- 27           b. Developing forms and procedures that provide an  
28 insurer with the information necessary to determine whether  
29 the insurer wants to write particular applicants to the plan  
30 or insureds of the plan.
- 31

1           c. Developing procedures for notice to the plan and  
2 the applicant to the plan or insured of the plan that an  
3 insurer will insure the applicant or the insured of the plan,  
4 and notice of the cost of the coverage offered; and developing  
5 procedures for the selection of an insuring entity by the  
6 applicant or insured of the plan.

7           d. Provide for a market-assistance plan to assist in  
8 the placement of employers. All applications for coverage in  
9 the plan received 45 days before the effective date for  
10 coverage shall be processed through the market-assistance  
11 plan. A market-assistance plan specifically designed to serve  
12 the needs of small good policyholders as defined by the board  
13 must be finalized by January 1, 1994.

14           5. Provide for policy and claims services to the  
15 insureds of the plan of the nature and quality provided for  
16 insureds in the voluntary market.

17           6. Provide for the review of applications for coverage  
18 with the plan for reasonableness and accuracy, using any  
19 available historic information regarding the insured.

20           7. Provide for procedures for auditing insureds of the  
21 plan which are based on reasonable business judgment and are  
22 designed to maximize the likelihood that the plan will collect  
23 the appropriate premiums.

24           8. Authorize the plan to terminate the coverage of and  
25 refuse future coverage for any insured that submits a  
26 fraudulent application to the plan or provides fraudulent or  
27 grossly erroneous records to the plan or to any service  
28 provider of the plan in conjunction with the activities of the  
29 plan.

30           9. Establish service standards for agents who submit  
31 business to the plan.

1           10. Establish criteria and procedures to prohibit any  
2 agent who does not adhere to the established service standards  
3 from placing business with the plan or receiving, directly or  
4 indirectly, any commissions for business placed with the plan.

5           11. Provide for the establishment of reasonable safety  
6 programs for all insureds in the plan. At the direction of the  
7 board, the Division of Workers' Compensation ~~Safety~~ shall  
8 provide inspection to insureds and applicants for coverage in  
9 the plan identified as high-risk insureds by the board or its  
10 designee.

11           12. Authorize the plan to terminate the coverage of  
12 and refuse future coverage to any insured who fails to pay  
13 premiums or surcharges when due; who, at the time of  
14 application, is delinquent in payments of workers'  
15 compensation or employer's liability insurance premiums or  
16 surcharges owed to an insurer, group self-insurers' fund,  
17 commercial self-insurance fund, or assessable mutual insurer  
18 licensed to write such coverage in this state; or who refuses  
19 to substantially comply with any safety programs recommended  
20 by the plan.

21           13. Authorize the board of governors to provide the  
22 services required by the plan through staff employed by the  
23 plan, through reasonably compensated service providers who  
24 contract with the plan to provide services as specified by the  
25 board of governors, or through a combination of employees and  
26 service providers.

27           14. Provide for service standards for service  
28 providers, methods of determining adherence to those service  
29 standards, incentives and disincentives for service, and  
30 procedures for terminating contracts for service providers  
31 that fail to adhere to service standards.

1           15. Provide procedures for selecting service providers  
2 and standards for qualification as a service provider that  
3 reasonably assure that any service provider selected will  
4 continue to operate as an ongoing concern and is capable of  
5 providing the specified services in the manner required.

6           16. Provide for reasonable accounting and  
7 data-reporting practices.

8           17. Provide for annual review of costs associated with  
9 the administration and servicing of the policies issued by the  
10 plan to determine alternatives by which costs can be reduced.

11           18. Authorize the acquisition of such excess insurance  
12 or reinsurance as is consistent with the purposes of the plan.

13           19. Provide for an annual report to the department on  
14 a date specified by the department and containing such  
15 information as the department reasonably requires.

16           20. Establish multiple rating plans for various  
17 classifications of risk which reflect risk of loss, hazard  
18 grade, actual losses, size of premium, and compliance with  
19 loss control. At least one of such plans must be a  
20 preferred-rating plan to accommodate small-premium  
21 policyholders with good experience as defined in  
22 sub-subparagraph 22.a.

23           21. Establish agent commission schedules.

24           22. Establish three subplans as follows:

25           a. Subplan "A" must include those insureds whose  
26 annual premium does not exceed \$2,500 and who have neither  
27 incurred any lost-time claims nor incurred medical-only claims  
28 exceeding 50 percent of their premium for the immediate 2  
29 years.

30           b. Subplan "B" must include insureds that are  
31 employers identified by the board of governors as high-risk

1 employers due solely to the nature of the operations being  
2 performed by those insureds and for whom no market exists in  
3 the voluntary market, and whose experience modifications are  
4 less than 1.00.

5 c. Subplan "C" must include all other insureds within  
6 the plan.

7 Section 25. Section 440.4416, Florida Statutes, is  
8 hereby repealed.

9 Section 26. This act shall take effect October 1 of  
10 the year in which enacted.

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HOUSE SUMMARY

Deletes the Division of Safety of the Department of Labor and Employment Security and provides for the Division of Workers' Compensation to assume the duties and responsibilities of the Division of Safety. Creates the Workers' Compensation Appeals Commission to review orders of judges of compensation claims in workers' compensation proceedings. Prohibits the construction industry from electing exemption from workers' compensation provisions. Eliminates impairment ratings and requires objective medical findings for psychiatric disability. Increases penalties against employers who do not carry workers' compensation coverage. Provides for requests for alternative medical care. Provides for rehabilitation providers' right to medical records. Provides for independent medical examinations. Provides for informal and formal grievance procedures in managed care arrangements. Revises provisions relating to determinations of pay, excludes average weekly wage issues from attorney's fee calculations, and provides for use of actual wages earned. Revises provisions providing for payment of compensation for disability relating to permanent total disability, temporary total disability, permanent impairment and wage-loss benefits, and temporary partial disability to increase benefits to injured workers. Replaces criteria, procedures, and requirements for payment of supplemental benefits with such provisions for wage-loss benefits. Provides for approval of lump sum settlement agreements. Clarifies award of attorney's fees, prohibits attorney's fees based on an hourly rate and prescribes award of attorney's fees on a contingency basis, eliminates interest on attorney's fees, and requires notice to employees of attorney fee hearings. Requires employers to keep records and reports. Provides for oaths and witnesses. Creates the Florida Workers' Compensation Management Board as a nonprofit corporation to provide management operations and services necessary to administer the workers' compensation system. Repeals the Workers' Compensation Oversight Board. See bill for details.