

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; defining the terms
4 "corporate officer," "partner," and "sole
5 proprietor," as used in ch. 440, F.S.; amending
6 s. 440.05, F.S.; authorizing the Division of
7 Workers' Compensation of the Department of
8 Labor and Employment Security to approve and
9 revoke certificates of exemption; specifying
10 requirements for notices of election to be
11 exempt; providing for renewal of exemption
12 certificates; requiring notice on election
13 forms that providing false information is a
14 felony; revising fees for exemptions and
15 specifying use of fees by the division;
16 amending s. 440.09, F.S.; conforming references
17 to judges of compensation claims and
18 administrative law judges; amending s. 440.10,
19 F.S.; relating to liability for compensation;
20 revising provisions relating to when a person
21 is conclusively presumed to be an independent
22 contractor; providing circumstances in which
23 carriers may not consider a person to be an
24 employee; amending s. 440.103, F.S.; revising
25 the documentation that must be filed by an
26 employer that obtains a building permit;
27 specifying requirements for certificates of
28 coverage; amending s. 440.104, F.S.; revising
29 the cause of action and remedies available to
30 losers of competitive bidding against persons
31 who violate certain provisions; increasing

1 recoverable damages; amending s. 440.105, F.S.;
2 providing penalties; providing a time
3 limitation for bringing an action under s.
4 440.105(4), F.S.; amending s. 440.107, F.S.;
5 providing legislative findings related to
6 noncompliance with workers' compensation
7 coverage requirements; authorizing the division
8 to enter and inspect places of business for
9 investigating compliance; requiring employers
10 to maintain records required by the division by
11 rule; authorizing the division to require sworn
12 reports from employers, to administer oaths,
13 and to issue subpoenas to enforce compliance;
14 providing penalties for refusal to obey a
15 subpoena; amending 440.185, F.S.; specifying a
16 notice of injury to be a medical record;
17 requiring carriers to notify the division
18 whether certain policies are minimum premium
19 policies; amending s.440.42, F.S.; authorizing
20 workers' compensation policies to require
21 employers to release certain employment and
22 wage information; amending s. 440.45, F.S.;
23 revising term of office, qualifications, and
24 method of nomination for the Chief Judge of the
25 Office of the Judges of Compensation Claims;
26 providing for expiration of term of office for
27 members of the statewide nominating commission
28 for judges of compensation claims; providing
29 for new appointments to the nominating
30 commission and staggered terms; revising the
31 procedures for nominating commission regarding

1 performance of sitting judges and regarding
2 nominations of applicants; providing for
3 expiration of the term of office and
4 reappointment of the Chief Judge of
5 Compensation Claims; amending s. 626.989, F.S.;
6 requiring the Division of Insurance Fraud of
7 the Department of Insurance and the Division of
8 Workers' Compensation of the Department of
9 Labor and Employment Security to periodically
10 submit a joint performance report to the
11 Legislature; amending s. 627.413, F.S.;
12 specifying notice requirements for minimum
13 premium policies; requiring the division to
14 notify certain persons of certain requirements
15 of this act; providing an appropriation;
16 amending 775.15, F.S.; providing a statute of
17 limitations for certain insurance fraud
18 violations; providing an effective date.

19

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

21

22 Section 1. Section 440.02, Florida Statutes, is
23 amended to read:

24

24 440.02 Definitions.--When used in this chapter, unless
25 the context clearly requires otherwise, the following terms
26 shall have the following meanings:

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27 (1) "Accident" means only an unexpected or unusual
28 event or result that happens suddenly. A mental or nervous
29 injury due to stress, fright, or excitement only, or
30 disability or death due to the accidental acceleration or
31 aggravation of a venereal disease or of a disease due to the

1 habitual use of alcohol or controlled substances or narcotic
2 drugs, or a disease that manifests itself in the fear of or
3 dislike for an individual because of the individual's race,
4 color, religion, sex, national origin, age, or handicap is not
5 an injury by accident arising out of the employment. If a
6 preexisting disease or anomaly is accelerated or aggravated by
7 an accident arising out of and in the course of employment,
8 only acceleration of death or acceleration or aggravation of
9 the preexisting condition reasonably attributable to the
10 accident is compensable, with respect to death or permanent
11 impairment.

12 (2) "Adoption" or "adopted" means legal adoption prior
13 to the time of the injury.

14 (3) "Carrier" means any person or fund authorized
15 under s. 440.38 to insure under this chapter and includes a
16 self-insurer, and a commercial self-insurance fund authorized
17 under s. 624.462.

18 (4) "Casual" as used in this section shall be taken to
19 refer only to employments when the work contemplated is to be
20 completed in not exceeding 10 working days, without regard to
21 the number of persons employed, and when the total labor cost
22 of such work is less than \$100.

23 (5) "Child" includes a posthumous child, a child
24 legally adopted prior to the injury of the employee, and a
25 stepchild or acknowledged child born out of wedlock dependent
26 upon the deceased, but does not include married children
27 unless wholly dependent on the employee. "Grandchild" means a
28 child as above defined of a child as above defined. "Brother"
29 and "sister" include stepbrothers and stepsisters, half
30 brothers and half sisters, and brothers and sisters by
31 adoption, but does not include married brothers or married

1 sisters unless wholly dependent on the employee. "Child,"
2 "grandchild," "brother," and "sister" include only persons who
3 at the time of the death of the deceased employees are under
4 18 years of age, or under 22 years of age if a full-time
5 student in an accredited educational institution.

6 (6) "Compensation" means the money allowance payable
7 to an employee or to his or her dependents as provided for in
8 this chapter.

9 (7) "Construction industry" means for-profit
10 activities involving the carrying out of any building,
11 clearing, filling, excavation, or substantial improvement in
12 the size or use of any structure or the appearance of any
13 land. When appropriate to the context, "construction" refers
14 to the act of construction or the result of construction.
15 However, "construction" shall not mean a landowner's act of
16 construction or the result of a construction upon his or her
17 own premises, provided such premises are not intended to be
18 sold or resold.

19 (8) "Corporate officer or officer of a corporation"
20 means any person who fills an office provided for in the
21 corporate charter or articles of incorporation filed with the
22 Division of Corporations of the Department of State or as
23 permitted or required by chapter 607.

24 (9)~~(8)~~ "Date of maximum medical improvement" means the
25 date after which further recovery from, or lasting improvement
26 to, an injury or disease can no longer reasonably be
27 anticipated, based upon reasonable medical probability.

28 (10)~~(9)~~ "Death" as a basis for a right to compensation
29 means only death resulting from an injury.

30 (11)~~(10)~~ "Department" means the Department of Labor
31 and Employment Security.

1 (12)~~(11)~~ "Disability" means incapacity because of the
2 injury to earn in the same or any other employment the wages
3 which the employee was receiving at the time of the injury.

4 (13)~~(12)~~ "Division" means the Division of Workers'
5 Compensation of the Department of Labor and Employment
6 Security.

7 (14)~~(13)~~(a) "Employee" means any person engaged in any
8 employment under any appointment or contract of hire or
9 apprenticeship, express or implied, oral or written, whether
10 lawfully or unlawfully employed, and includes, but is not
11 limited to, aliens and minors.

12 (b) "Employee" includes any person who is an officer
13 of a corporation and who performs services for remuneration
14 for such corporation within this state, whether or not such
15 services are continuous.

16 1. Any officer of a corporation may elect to be exempt
17 from this chapter by filing written notice of the election
18 with the division as provided in s. 440.05.

19 2. As to officers of a corporation who are actively
20 engaged in the construction industry, no more than three
21 officers may elect to be exempt from this chapter by filing
22 written notice of the election with the division as provided
23 in s. 440.05.

24 3. An officer of a corporation who elects to be exempt
25 from this chapter by filing a written notice of the election
26 with the division as provided in s. 440.05 is not an employee.

27
28 Services are presumed to have been rendered to the corporation
29 if the officer is compensated by other than dividends upon
30 shares of stock of the corporation which the officer owns.

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1 (c) "Employee" includes a sole proprietor or a partner
2 who devotes full time to the proprietorship or partnership
3 and, except as provided in this paragraph, elects to be
4 included in the definition of employee by filing notice
5 thereof as provided in s. 440.05. Partners or sole proprietors
6 actively engaged in the construction industry are considered
7 employees unless they elect to be excluded from the definition
8 of employee by filing written notice of the election with the
9 division as provided in s. 440.05. However, no more than three
10 partners in a partnership that is actively engaged in the
11 construction industry may elect to be excluded. A sole
12 proprietor or partner who is actively engaged in the
13 construction industry and who elects to be exempt from this
14 chapter by filing a written notice of the election with the
15 division as provided in s. 440.05 is not an employee. For
16 purposes of this chapter, an independent contractor is an
17 employee unless he or she meets all of the conditions set
18 forth in subparagraph (d)1.

19 (d) "Employee" does not include:

20 1. An independent contractor, if:

21 a. The independent contractor maintains a separate
22 business with his or her own work facility, truck, equipment,
23 materials, or similar accommodations;

24 b. The independent contractor holds or has applied for
25 a federal employer identification number, unless the
26 independent contractor is a sole proprietor who is not
27 required to obtain a federal employer identification number
28 under state or federal requirements;

29 c. The independent contractor performs or agrees to
30 perform specific services or work for specific amounts of
31

1 money and controls the means of performing the services or
2 work;

3 d. The independent contractor incurs the principal
4 expenses related to the service or work that he or she
5 performs or agrees to perform;

6 e. The independent contractor is responsible for the
7 satisfactory completion of work or services that he or she
8 performs or agrees to perform and is or could be held liable
9 for a failure to complete the work or services;

10 f. The independent contractor receives compensation
11 for work or services performed for a commission or on a
12 per-job or competitive-bid basis and not on any other basis;

13 g. The independent contractor may realize a profit or
14 suffer a loss in connection with performing work or services;

15 h. The independent contractor has continuing or
16 recurring business liabilities or obligations; and

17 i. The success or failure of the independent
18 contractor's business depends on the relationship of business
19 receipts to expenditures.

20

21 However, the determination as to whether an individual
22 included in the Standard Industrial Classification Manual of
23 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
24 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
25 2448, or 2449, or a newspaper delivery person, is an
26 independent contractor is governed not by the criteria in this
27 paragraph but by common-law principles, giving due
28 consideration to the business activity of the individual.

29 2. A real estate salesperson or agent, if that person
30 agrees, in writing, to perform for remuneration solely by way
31 of commission.

1 3. Bands, orchestras, and musical and theatrical
2 performers, including disk jockeys, performing in licensed
3 premises as defined in chapter 562, if a written contract
4 evidencing an independent contractor relationship is entered
5 into before the commencement of such entertainment.

6 4. An owner-operator of a motor vehicle who transports
7 property under a written contract with a motor carrier which
8 evidences a relationship by which the owner-operator assumes
9 the responsibility of an employer for the performance of the
10 contract, if the owner-operator is required to furnish the
11 necessary motor vehicle equipment and all costs incidental to
12 the performance of the contract, including, but not limited
13 to, fuel, taxes, licenses, repairs, and hired help; and the
14 owner-operator is paid a commission for transportation service
15 and is not paid by the hour or on some other time-measured
16 basis.

17 5. A person whose employment is both casual and not in
18 the course of the trade, business, profession, or occupation
19 of the employer.

20 6. A volunteer, except a volunteer worker for the
21 state or a county, municipality, or other governmental entity.
22 A person who does not receive monetary remuneration for
23 services is presumed to be a volunteer unless there is
24 substantial evidence that a valuable consideration was
25 intended by both employer and employee. For purposes of this
26 chapter, the term "volunteer" includes, but is not limited to:

27 a. Persons who serve in private nonprofit agencies and
28 who receive no compensation other than expenses in an amount
29 less than or equivalent to the standard mileage and per diem
30 expenses provided to salaried employees in the same agency or,
31 if such agency does not have salaried employees who receive

1 mileage and per diem, then such volunteers who receive no
2 compensation other than expenses in an amount less than or
3 equivalent to the customary mileage and per diem paid to
4 salaried workers in the community as determined by the
5 division; and

6 b. Volunteers participating in federal programs
7 established under Pub. L. No. 93-113.

8 7. Any officer of a corporation who elects to be
9 exempt from this chapter.

10 8. A sole proprietor or officer of a corporation who
11 actively engages in the construction industry, and a partner
12 in a partnership that is actively engaged in the construction
13 industry, who elects to be exempt from the provisions of this
14 chapter. Such sole proprietor, officer, or partner is not an
15 employee for any reason until the notice of revocation of
16 election filed pursuant to s. 440.05 is effective.

17 9. An exercise rider who does not work for a single
18 horse farm or breeder, and who is compensated for riding on a
19 case-by-case basis, provided a written contract is entered
20 into prior to the commencement of such activity which
21 evidences that an employee/employer relationship does not
22 exist.

23 10. A taxicab, limousine, or other passenger
24 vehicle-for-hire driver who operates said vehicles pursuant to
25 a written agreement with a company which provides any
26 dispatch, marketing, insurance, communications, or other
27 services under which the driver and any fees or charges paid
28 by the driver to the company for such services are not
29 conditioned upon, or expressed as a proportion of, fare
30 revenues.

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1 (15)~~(14)~~ "Employer" means the state and all political
2 subdivisions thereof, all public and quasi-public corporations
3 therein, every person carrying on any employment, and the
4 legal representative of a deceased person or the receiver or
5 trustees of any person. If the employer is a corporation,
6 parties in actual control of the corporation, including, but
7 not limited to, the president, officers who exercise broad
8 corporate powers, directors, and all shareholders who directly
9 or indirectly own a controlling interest in the corporation,
10 are considered the employer for the purposes of ss. 440.105
11 and 440.106.

12 (16)~~(15)~~(a) "Employment," subject to the other
13 provisions of this chapter, means any service performed by an
14 employee for the person employing him or her.

15 (b) "Employment" includes:

16 1. Employment by the state and all political
17 subdivisions thereof and all public and quasi-public
18 corporations therein, including officers elected at the polls.

19 2. All private employments in which four or more
20 employees are employed by the same employer or, with respect
21 to the construction industry, all private employment in which
22 one or more employees are employed by the same employer.

23 3. Volunteer firefighters responding to or assisting
24 with fire or medical emergencies whether or not the
25 firefighters are on duty.

26 (c) "Employment" does not include service performed by
27 or as:

28 1. Domestic servants in private homes.

29 2. Agricultural labor performed on a farm in the
30 employ of a bona fide farmer, or association of farmers, who
31 employs 5 or fewer regular employees and who employs fewer

1 than 12 other employees at one time for seasonal agricultural
2 labor that is completed in less than 30 days, provided such
3 seasonal employment does not exceed 45 days in the same
4 calendar year. The term "farm" includes stock, dairy, poultry,
5 fruit, fur-bearing animals, fish, and truck farms, ranches,
6 nurseries, and orchards. The term "agricultural labor"
7 includes field foremen, timekeepers, checkers, and other farm
8 labor supervisory personnel.

9 3. Professional athletes, such as professional boxers,
10 wrestlers, baseball, football, basketball, hockey, polo,
11 tennis, jai alai, and similar players, and motorsports teams
12 competing in a motor racing event as defined in s. 549.08.

13 4. Labor under a sentence of a court to perform
14 community services as provided in s. 316.193.

15 (17)~~(16)~~ "Misconduct" includes, but is not limited to,
16 the following, which shall not be construed in pari materia
17 with each other:

18 (a) Conduct evincing such willful or wanton disregard
19 of an employer's interests as is found in deliberate violation
20 or disregard of standards of behavior which the employer has
21 the right to expect of the employee; or

22 (b) Carelessness or negligence of such a degree or
23 recurrence as to manifest culpability, wrongful intent, or
24 evil design, or to show an intentional and substantial
25 disregard of an employer's interests or of the employee's
26 duties and obligations to the employer.

27 (18)~~(17)~~ "Injury" means personal injury or death by
28 accident arising out of and in the course of employment, and
29 such diseases or infection as naturally or unavoidably result
30 from such injury. Damage to dentures, eyeglasses, prosthetic
31 devices, and artificial limbs may be included in this

1 definition only when the damage is shown to be part of, or in
2 conjunction with, an accident. This damage must specifically
3 occur as the result of an accident in the normal course of
4 employment.

5 (19)~~(18)~~ "Parent" includes stepparents and parents by
6 adoption, parents-in-law, and any persons who for more than 3
7 years prior to the death of the deceased employee stood in the
8 place of a parent to him or her and were dependent on the
9 injured employee.

10 (20) "Partner" means any person who is a member of a
11 partnership that is formed by two or more persons to carry on
12 as coowners of a business with the understanding that there
13 will be a proportional sharing of the profits and losses
14 between them. For the purposes of this chapter, a partner is a
15 person who participates fully in the management of the
16 partnership and who is personally liable for its debts.

17 (21)~~(19)~~ "Permanent impairment" means any anatomic or
18 functional abnormality or loss determined as a percentage of
19 the body as a whole, existing after the date of maximum
20 medical improvement, which results from the injury.

21 (22)~~(20)~~ "Person" means individual, partnership,
22 association, or corporation, including any public service
23 corporation.

24 (23)~~(21)~~ "Self-insurer" means:

25 (a) Any employer who has secured payment of
26 compensation pursuant to s. 440.38(1)(b) or (6) as an
27 individual self-insurer;

28 (b) Any employer who has secured payment of
29 compensation through a group self-insurance fund under s.
30 624.4621;

31

1 (c) Any group self-insurance fund established under s.
2 624.4621;

3 (d) A public utility as defined in s. 364.02 or s.
4 366.02 that has assumed by contract the liabilities of
5 contractors or subcontractors pursuant to s. 440.571; or

6 (e) Any local government self-insurance fund
7 established under s. 624.4622.

8 (24) "Sole proprietor" means a natural person who owns
9 a form of business in which that person owns all the assets of
10 the business and is solely liable for all the debts of the
11 business.

12 (25)~~(22)~~ "Spouse" includes only a spouse substantially
13 dependent for financial support upon the decedent and living
14 with the decedent at the time of the decedent's injury and
15 death, or substantially dependent upon the decedent for
16 financial support and living apart at that time for
17 justifiable cause.

18 (26)~~(23)~~ "Time of injury" means the time of the
19 occurrence of the accident resulting in the injury.

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

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

13 (28)~~(25)~~ "Weekly compensation rate" means and refers
14 to the amount of compensation payable for a period of 7
15 consecutive days, including any Saturdays, Sundays, holidays,
16 and other nonworking days which fall within such period of 7
17 consecutive days. When Saturdays, Sundays, holidays, or other
18 nonworking days immediately follow the first 7 days of
19 disability or occur at the end of a period of disability as
20 the last day or days of such period, such nonworking days
21 constitute a part of the period of disability with respect to
22 which compensation is payable.

23 (29)~~(26)~~ "Construction design professional" means an
24 architect, professional engineer, landscape architect, or
25 surveyor and mapper, or any corporation, professional or
26 general, that has a certificate to practice in the
27 construction design field from the Department of Business and
28 Professional Regulation.

29 (30)~~(27)~~ "Individual self-insurer" means any employer
30 who has secured payment of compensation pursuant to s.
31 440.38(1)(b) as an individual self-insurer.

1 ~~(31)~~(28) "Domestic individual self-insurer" means an
2 individual self-insurer:

3 (a) Which is a corporation formed under the laws of
4 this state;

5 (b) Who is an individual who is a resident of this
6 state or whose primary place of business is located in this
7 state; or

8 (c) Which is a partnership whose principals are
9 residents of this state or whose primary place of business is
10 located in this state.

11 ~~(32)~~(29) "Foreign individual self-insurer" means an
12 individual self-insurer:

13 (a) Which is a corporation formed under the laws of
14 any state, district, territory, or commonwealth of the United
15 States other than this state;

16 (b) Who is an individual who is not a resident of this
17 state and whose primary place of business is not located in
18 this state; or

19 (c) Which is a partnership whose principals are not
20 residents of this state and whose primary place of business is
21 not located in this state.

22 ~~(33)~~(30) "Insolvent member" means an individual
23 self-insurer which is a member of the Florida Self-Insurers
24 Guaranty Association, Incorporated, or which was a member and
25 has withdrawn pursuant to s. 440.385(1)(b), and which has been
26 found insolvent, as defined in paragraph~~(34)(a)~~(31)(a),
27 paragraph~~(34)(b)~~(31)(b), or paragraph~~(34)(c)~~(31)(c), by a
28 court of competent jurisdiction in this or any other state, or
29 meets the definition of paragraph~~(34)(d)~~(31)(d).

30 ~~(34)~~(31) "Insolvency" or "insolvent" means:

31 (a) With respect to an individual self-insurer:

1 1. That all assets of the individual self-insurer, if
2 made immediately available, would not be sufficient to meet
3 all the individual self-insurer's liabilities;

4 2. That the individual self-insurer is unable to pay
5 its debts as they become due in the usual course of business;

6 3. That the individual self-insurer has substantially
7 ceased or suspended the payment of compensation to its
8 employees as required in this chapter; or

9 4. That the individual self-insurer has sought
10 protection under the United States Bankruptcy Code or has been
11 brought under the jurisdiction of a court of bankruptcy as a
12 debtor pursuant to the United States Bankruptcy Code.

13 (b) With respect to an employee claiming insolvency
14 pursuant to s. 440.25(5), a person is insolvent who:

15 1. Has ceased to pay his or her debts in the ordinary
16 course of business and cannot pay his or her debts as they
17 become due; or

18 2. Has been adjudicated insolvent pursuant to the
19 federal bankruptcy law.

20 (35)~~(32)~~ "Arising out of" pertains to occupational
21 causation. An accidental injury or death arises out of
22 employment if work performed in the course and scope of
23 employment is the major contributing cause of the injury or
24 death.

25 (36)~~(33)~~ "Soft-tissue injury" means an injury that
26 produces damage to the soft tissues, rather than to the
27 skeletal tissues or soft organs.

28 (37)~~(34)~~ "Catastrophic injury" means a permanent
29 impairment constituted by:

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

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

3 (c) Severe brain or closed-head injury as evidenced
4 by:

5 1. Severe sensory or motor disturbances;

6 2. Severe communication disturbances;

7 3. Severe complex integrated disturbances of cerebral
8 function;

9 4. Severe episodic neurological disorders; or

10 5. Other severe brain and closed-head injury
11 conditions at least as severe in nature as any condition
12 provided in subparagraphs 1.-4.;

13 (d) Second-degree or third-degree burns of 25 percent
14 or more of the total body surface or third-degree burns of 5
15 percent or more to the face and hands;

16 (e) Total or industrial blindness; or

17 (f) Any other injury that would otherwise qualify
18 under this chapter of a nature and severity that would qualify
19 an employee to receive disability income benefits under Title
20 II or supplemental security income benefits under Title XVI of
21 the federal Social Security Act as the Social Security Act
22 existed on July 1, 1992, without regard to any time
23 limitations provided under that act.

24 ~~(38)~~(35) "Insurer" means a group self-insurers' fund
25 authorized by s. 624.4621, an individual self-insurer
26 authorized by s. 440.38, a commercial self-insurance fund
27 authorized by s. 624.462, an assessable mutual insurer
28 authorized by s. 628.6011, and an insurer licensed to write
29 workers' compensation and employer's liability insurance in
30 this state. The term "carrier," as used in this chapter, means
31 an insurer as defined in this subsection.

1 ~~(39)(36)~~ "Statement," for the purposes of ss. 440.105
2 and 440.106, includes, but is not limited to, any notice,
3 representation, statement, proof of injury, bill for services,
4 diagnosis, prescription, hospital or doctor record, X ray,
5 test result, or other evidence of loss, injury, or expense.

6 Section 2. Section 440.05, Florida Statutes, is
7 amended to read:

8 440.05 Election of exemption; revocation of election;
9 notice; certification.--

10 (1) Each corporate officer who elects not to accept
11 the provisions of this chapter or who, after electing such
12 exemption, revokes that exemption shall mail to the division
13 in Tallahassee notice to such effect in accordance with a form
14 to be prescribed by the division.

15 (2) Each sole proprietor or partner who elects to be
16 included in the definition of "employee" or who, after such
17 election, revokes that election must mail to the division in
18 Tallahassee notice to such effect, in accordance with a form
19 to be prescribed by the division.

20 (3) Each sole proprietor, partner, or officer of a
21 corporation who is actively engaged in the construction
22 industry and who elects an exemption from this chapter or who,
23 after electing such exemption, revokes that exemption, must
24 mail a written notice to such effect to the division on a form
25 prescribed by the division. The notice of election to be
26 exempt from the provisions of this chapter must be notarized
27 and under oath. The notice of election to be exempt which is
28 submitted to the division by the sole proprietor, partner, or
29 officer of a corporation must list the name, federal tax
30 identification number, social security number, ~~and~~ all
31 certified or registered licenses issued pursuant to chapter

1 489 held by the person seeking the exemption, a copy of
2 relevant documentation as to employment status filed with the
3 IRS as specified by the division, a copy of the relevant
4 occupational license in the primary jurisdiction of the
5 business, and, for corporate officers and partners, the
6 registration number of the corporation or partnership filed
7 with the Division of Corporations of the Department of State.
8 The notice of election to be exempt ~~form~~ must identify each
9 sole proprietorship, partnership, or corporation that employs
10 the person electing the exemption and must list the social
11 security number or federal tax identification number of each
12 such employer and the additional documentation required by
13 this section. In addition, the notice of election to be exempt
14 ~~form~~ must provide that the sole proprietor, partner, or
15 officer electing an exemption is not entitled to benefits
16 under this chapter, must provide that the election does not
17 exceed exemption limits for officers and partnerships provided
18 in s. 440.02, and must certify that any employees of the sole
19 proprietor, partner, or officer electing an exemption are
20 covered by workers' compensation insurance. Upon receipt of
21 the notice of the election to be exempt, receipt of all
22 application fees, and a determination by the division that the
23 notice meets the requirements of this subsection, the division
24 shall issue a certification of the election to the sole
25 proprietor, partner, or officer, unless the division
26 determines that the information contained in the notice is
27 invalid. The division shall revoke a certificate of election
28 to be exempt from coverage upon a determination by the
29 division that the person does not meet the requirements for
30 exemption or that the information contained in the notice of
31 election to be exempt is invalid. The certificate of election

1 must list the names of the sole proprietorship, partnership,
2 or corporation listed in the request for exemption. A new
3 certificate of election must be obtained each time the person
4 is employed by a new sole proprietorship, partnership, or
5 corporation that is not listed on the certificate of election.
6 A copy of the certificate of election must be sent to each
7 workers' compensation carrier identified in the request for
8 exemption. ~~The certification of the election is valid until~~
9 ~~the sole proprietor, partner, or officer revokes her or his~~
10 ~~election.~~ Upon filing a notice of revocation of election, a
11 sole proprietor, partner, or officer who is a subcontractor
12 must notify her or his contractor. Upon revocation of a
13 certificate of election of exemption by the division, the
14 division shall notify the workers' compensation carriers
15 identified in the request for exemption.

16 (4) The notice of election to be exempt from the
17 provisions of this chapter must contain a notice that clearly
18 states in substance the following: "Any person who, knowingly
19 and with intent to injure, defraud, or deceive the division or
20 any employer or employee, insurance company, or purposes
21 program, files a notice of election to be exempt containing
22 any false or misleading information is guilty of a felony of
23 the third degree." Each person filing a notice of election to
24 be exempt shall personally sign the notice and attest that he
25 or she has reviewed, understands, and acknowledges the
26 foregoing notice.

27 (5)(4) A notice given under subsection (1), subsection
28 (2), or subsection (3) shall become effective when issued by
29 the division or 30 days after an application for an exemption
30 is received by the division, whichever occurs first is not
31 ~~effective until 30 days after the date it is mailed to the~~

1 ~~division in Tallahassee~~. However, if an accident or
 2 occupational disease occurs less than 30 days after the
 3 effective date of the insurance policy under which the payment
 4 of compensation is secured or the date the employer qualified
 5 as a self-insurer, such notice is effective as of 12:01 a.m.
 6 of the day following the date it is mailed to the division in
 7 Tallahassee.

8 (6) A construction industry certificate of election to
 9 be exempt which is issued in accordance with this section
 10 shall be valid for 2 years after the effective date stated
 11 thereon. Both the effective date and the expiration date must
 12 be listed on the face of the certificate by the division. The
 13 construction industry certificate must expire at midnight, 2
 14 years from its issue date, as noted on the face of the
 15 exemption certificate. Any person who has received from the
 16 division a construction industry certificate of election to be
 17 exempt which is in effect on December 31, 1998, shall file a
 18 new notice of election to be exempt by the last day in his or
 19 her birth month following December 1, 1998. A construction
 20 industry certificate of election to be exempt may be revoked
 21 before its expiration by the sole proprietor, partner, or
 22 officer for whom it was issued or by the division for the
 23 reasons stated in this section. At least 60 days prior to the
 24 expiration date of a construction industry certificate of
 25 exemption issued after December 1, 1998, the division shall
 26 send notice of the expiration date and an application for
 27 renewal to the certificateholder at the address on the
 28 certificate.

29 (7)(5) Any contractor responsible for compensation
 30 under s. 440.10 may register in writing with the workers'
 31 compensation carrier for any subcontractor and shall

1 thereafter be entitled to receive written notice from the
2 carrier of any cancellation or nonrenewal of the policy.

3 (8)(a)(6) The division may assess a fee, not to exceed
4 \$50, with each request for a nonconstruction election ~~or~~
5 ~~renewal of election~~ under this section.

6 (b) The division must assess a fee of \$50, with each
7 request for a construction industry certificate of election to
8 be exempt or renewal of election to be exempt under this
9 section.

10 (c) The funds collected by the division shall be used
11 to administer this section, and to audit the businesses that
12 pay the fee for compliance with any requirements of this
13 chapter, and to enforce compliance with the provisions of this
14 chapter.

15 Section 3. Subsection (4) of section 440.09, Florida
16 Statutes, is amended to read:

17 440.09 Coverage.--

18 (4) An employee shall not be entitled to compensation
19 or benefits under this chapter if any judge of compensation
20 claims, administrative law judge hearing officer, court, or
21 jury convened in this state determines that the employee has
22 knowingly or intentionally engaged in any of the acts
23 described in s. 440.105 for the purpose of securing workers'
24 compensation benefits.

25 Section 4. Paragraph (g) of subsection (1) of section
26 440.10, Florida Statutes, is amended to read:

27 440.10 Liability for compensation.--

28 (1)

29 (g) For purposes of this section, a person is
30 conclusively presumed to be an independent contractor if:
31

1 1. The independent contractor provides the general
2 contractor with an affidavit stating that he or she meets all
3 the requirements of s. 440.02(14)(~~13~~)(d); and

4 2. The independent contractor provides the general
5 contractor with a valid certificate of workers' compensation
6 insurance or a valid certificate of exemption issued by the
7 division.

8
9 A sole proprietor, ~~independent contractor~~, partner, or officer
10 of a corporation who elects exemption from this chapter by
11 filing a certificate of election under s. 440.05 may not
12 recover benefits or compensation under this chapter. An
13 independent contractor who provides the general contractor
14 with both an affidavit stating that he or she meets the
15 requirements of s. 440.02(14)(d) and a certificate of
16 exemption is not an employee under s. 440.02(14)(c) and may
17 not recover benefits under this chapter. For purposes of
18 determining the appropriate premium for workers' compensation
19 coverage, carriers may not consider any person who meets the
20 requirements of this paragraph to be an employee.

21 Section 5. Section 440.103, Florida Statutes, is
22 amended to read:

23 440.103 Building permits; identification of minimum
24 premium policy.--Except as otherwise provided in this chapter,
25 every employer shall, as a condition to receiving a building
26 permit, show proof that it has secured compensation for its
27 employees under this chapter as provided in ss. 440.10 and
28 440.38. Such proof of compensation must be evidenced by a
29 certificate of coverage issued by the carrier, a valid
30 exemption certificate approved by the division, or a copy of
31 the employer's authority to self-insure and shall be presented

1 each time the employer applies for a building permit. As
2 provided in s. 627.413(5), each certificate of coverage must
3 show, on its face, whether or not coverage is secured under
4 the minimum premium provisions of rules adopted by rating
5 organizations licensed by the Department of Insurance ~~the~~
6 ~~National Council of Compensation Insurers rules.~~ The words
7 "minimum premium policy" or equivalent similar language shall
8 ~~may~~ be typed, printed, stamped, or legibly handwritten.

9 Section 6. Subsections (1), (2), and (3) of section
10 440.104, Florida Statutes, are amended to read:

11 440.104 Competitive bidder; civil actions.--

12 (1) Any person engaged in the construction industry,
13 as provided in s. 440.02(7), who loses a competitive bid for a
14 contract shall have a cause of ~~may bring an~~ action for damages
15 against the another person ~~who is~~ awarded the contract for
16 which the bid was made, if the person making the losing bid
17 establishes that the winning bidder knew or should have known
18 that he or she was in violation ~~knowingly violated the~~
19 ~~provisions~~ of s. 440.10, s. 440.105, or s. 440.38 while
20 performing the work under the contract.

21 (2) To recover in an action brought under this
22 section, a party must establish a violation of s. 440.10, s.
23 440.105, or s. 440.38 by a preponderance of the evidence.

24 (3) Upon establishing that the winning bidder knew or
25 should have known of the violation ~~occurred~~, the person shall
26 recover as liquidated damages 30 ~~10~~ percent of the total
27 amount bid on the contract by the person bringing the action,
28 or \$15,000 ~~\$5,000~~, whichever is greater.

29 Section 7. Subsections (4), (5), (6), and (7) of
30 section 440.105, Florida Statutes, are amended, and subsection
31 (9) is added to said said, to read:

1 440.105 Prohibited activities; penalties;
2 limitations.--

3 (4) Whoever violates any provision of this subsection
4 commits insurance fraud ~~a felony of the third degree,~~
5 punishable as provided in paragraph (f)~~s. 775.082, s.~~
6 ~~775.083, or s. 775.084.~~

7 (a) It shall be unlawful for any employer to
8 knowingly:

9 1. Present or cause to be presented any false,
10 fraudulent, or misleading oral or written statement to any
11 person as evidence of compliance with s. 440.38.

12 2. Make a deduction from the pay of any employee
13 entitled to the benefits of this chapter for the purpose of
14 requiring the employee to pay any portion of premium paid by
15 the employer to a carrier or to contribute to a benefit fund
16 or department maintained by such employer for the purpose of
17 providing compensation or medical services and supplies as
18 required by this chapter.

19 3. Fail to secure payment of compensation if required
20 to do so by this chapter.

21 (b) It shall be unlawful for any person:

22 1. To knowingly make, or cause to be made, any false,
23 fraudulent, or misleading oral or written statement for the
24 purpose of obtaining or denying any benefit or payment under
25 this chapter.

26 2. To present or cause to be presented any written or
27 oral statement as part of, or in support of, a claim for
28 payment ~~or~~ of other benefit pursuant to any provision of this
29 chapter, knowing that such statement contains any false,
30 incomplete, or misleading information concerning any fact or
31 thing material to such claim.

1 3. To prepare or cause to be prepared any written or
2 oral statement that is intended to be presented to any
3 employer, insurance company, or self-insured program in
4 connection with, or in support of, any claim for payment or
5 other benefit pursuant to any provision of this chapter,
6 knowing that such statement contains any false, incomplete, or
7 misleading information concerning any fact or thing material
8 to such claim.

9 4. To knowingly assist, conspire with, or urge any
10 person to engage in activity prohibited by this section.

11 5. To knowingly make any false, fraudulent, or
12 misleading oral or written statement, or to knowingly omit or
13 conceal material information, required by s. 440.185 or s.
14 440.381, for the purpose of obtaining workers' compensation
15 coverage or for the purpose of avoiding, delaying, or
16 diminishing the amount of payment of any workers' compensation
17 premiums.

18 6. To knowingly misrepresent or conceal payroll,
19 classification of workers, or information regarding an
20 employer's loss history which would be material to the
21 computation and application of an experience rating
22 modification factor for the purpose of avoiding or diminishing
23 the amount of payment of any workers' compensation premiums.

24 7. To knowingly present or cause to be presented any
25 false, fraudulent, or misleading oral or written statement to
26 any person as evidence of compliance with s. 440.38, as
27 evidence of eligibility for a certificate of exemption under
28 s. 440.05.

29 (c) It shall be unlawful for any physician licensed
30 under chapter 458, osteopathic physician licensed under
31 chapter 459, chiropractic physician licensed under chapter

1 460, podiatric physician licensed under chapter 461,
2 optometric physician licensed under chapter 463, or any other
3 practitioner licensed under the laws of this state to
4 knowingly and willfully assist, conspire with, or urge any
5 person to fraudulently violate any of the provisions of this
6 chapter.

7 (d) It shall be unlawful for any person or
8 governmental entity licensed under chapter 395 to maintain or
9 operate a hospital in such a manner so that such person or
10 governmental entity knowingly and willfully allows the use of
11 the facilities of such hospital by any person, in a scheme or
12 conspiracy to fraudulently violate any of the provisions of
13 this chapter.

14 (e) It shall be unlawful for any attorney or other
15 person, in his or her individual capacity or in his or her
16 capacity as a public or private employee, or any firm,
17 corporation, partnership, or association, to knowingly assist,
18 conspire with, or urge any person to fraudulently violate any
19 of the provisions of this chapter.

20 (f) If the amount of any claim or workers'
21 compensation insurance premium involved in any violation of
22 this subsection:

23 1. Is less than \$20,000, the offender commits a felony
24 of the third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 2. Is \$20,000 or more, but less than \$100,000, the
27 offender commits a felony of the second degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084.

29 3. Is \$100,000 or more, the offender commits a felony
30 of the first degree, punishable as provided in s. 775.082, s.
31 775.083, or s. 775.084.

1 (5) It shall be unlawful for any attorney or other
 2 person, in his or her individual capacity or in his or her
 3 capacity as a public or private employee or for any firm,
 4 corporation, partnership, or association, to unlawfully
 5 solicit any business in and about city or county hospitals,
 6 courts, or any public institution or public place; in and
 7 about private hospitals or sanitariums; in and about any
 8 private institution; or upon private property of any character
 9 whatsoever for the purpose of making workers' compensation
 10 claims. Whoever violates any provision of this subsection
 11 commits a felony of the third degree, punishable as provided
 12 in s. 775.082, s. 775.083, or s. 775.085.

13 ~~(6)(5)~~ This section shall not be construed to preclude
 14 the applicability of any other provision of criminal law that
 15 applies or may apply to any transaction.

16 ~~(7)(6)~~ For the purpose of the section, the term
 17 "statement" includes, but is not limited to, any notice,
 18 representation, statement, proof of injury, bill for services,
 19 diagnosis, prescription, hospital or doctor records, X ray,
 20 test result, or other evidence of loss, injury, or expense.

21 ~~(8)(7)~~ All claim forms as provided for in this chapter
 22 shall contain a notice that clearly states in substance the
 23 following: "Any person who, knowingly and with intent to
 24 injure, defraud, or deceive any employer or employee,
 25 insurance company, or self-insured program, files a statement
 26 of claim containing any false or misleading information
 27 commits insurance fraud, punishable as provided in s. 817.234
 28 ~~is guilty of a felony of the third degree.~~" Each claimant
 29 shall personally sign the claim form and attest that he or she
 30 has reviewed, understands, and acknowledges the foregoing
 31 notice.

1 Section 8. Present subsections (1) through (7) of
2 section 440.107, Florida Statutes, are redesignated as
3 subsections (5) through (11), respectively, and new
4 subsections (1), (2), (3), and (4) are added to that section
5 to read: 440.107 Division powers to enforce employer
6 compliance with coverage requirements.--

7 (1) The Legislature finds that the failure of an
8 employer to comply with the workers' compensation coverage
9 requirements under chapter 440 poses an immediate danger to
10 public health, safety, and welfare. The Legislature authorizes
11 the division to secure employer compliance with the workers'
12 compensation coverage requirements and authorizes the division
13 to conduct investigations for the purpose of ensuring employer
14 compliance.

15 (2) The division and its authorized representatives
16 may enter and inspect any place of business at any reasonable
17 time for the limited purpose of investigating compliance with
18 workers' compensation coverage requirements under this
19 chapter. Each employer shall keep true and accurate business
20 records that contain such information as the division
21 prescribes by rule. The business records must contain
22 information necessary for the division to determine compliance
23 with workers' compensation coverage requirements and must be
24 maintained within this state by the business, in such a manner
25 as to be accessible within a reasonable time upon request by
26 the division. The business records must be open to inspection
27 and be available for copying by the division at any reasonable
28 time and place and as often as necessary. The division may
29 require from any employer any sworn or unsworn reports,
30 pertaining to persons employed by that employer, deemed

1 necessary for the effective administration of the workers'
2 compensation coverage requirements.

3 (3) In discharging its duties, the division may
4 administer oaths and affirmations, certify to official acts,
5 issue subpoenas to compel the attendance of witnesses and the
6 production of books, papers, correspondence, memoranda, and
7 other records deemed necessary by the division as evidence in
8 order to ensure proper compliance with the coverage provisions
9 of this chapter.

10 (4) If a person has refused to obey a subpoena to
11 appear before the division or its authorized representative
12 and produce evidence requested by the division or to give
13 testimony about the matter that is under investigation, a
14 court has jurisdiction to issue an order requiring compliance
15 with the subpoena if the court has jurisdiction in the
16 geographical area where the inquiry is being carried on or in
17 the area where the person who has refused the subpoena is
18 found, resides, or transacts business. Failure to obey such a
19 court order may be punished by the court as contempt.

20 Section 9. Subsections (2) and (7) of section 440.185,
21 Florida Statutes, are amended to read:

22 440.185 Notice of injury or death; reports; penalties
23 for violations.--

24 (2) Within 7 days after actual knowledge of injury or
25 death, the employer shall report such injury or death to its
26 carrier, in a format prescribed by the division, and shall
27 provide a copy of such report to the employee or the
28 employee's estate. The report of injury shall be deemed a
29 medical record for purposes of s. 440.125 and shall contain
30 the following information:

31 (a) The name, address, and business of the employer;

1 (b) The name, social security number, street, mailing
2 address, telephone number, and occupation of the employee;

3 (c) The cause and nature of the injury or death;

4 (d) The year, month, day, and hour when, and the
5 particular locality where, the injury or death occurred; and

6 (e) Such other information as the division may
7 require.

8
9 The carrier shall, within 14 days after the employer's receipt
10 of the form reporting the injury, file the information
11 required by this subsection with the division in Tallahassee.
12 However, the division may by rule provide for a different
13 reporting system for those types of injuries which it
14 determines should be reported in a different manner and for
15 those cases which involve minor injuries requiring
16 professional medical attention in which the employee does not
17 lose more than 7 days of work as a result of the injury and is
18 able to return to the job immediately after treatment and
19 resume regular work.

20 (7) Every carrier shall file with the division within
21 21 days after the issuance of a policy or contract of
22 insurance such policy information as the division may require,
23 including notice of whether the policy is a minimum premium
24 policy. Notice of cancellation or expiration of a policy as
25 set out in s. 440.42(2) shall be mailed to the division in
26 accordance with rules promulgated by the division under
27 chapter 120.

28 Section 10. Subsections (2) and (3) of section 440.42,
29 Florida Statutes, are renumbered as subsections (3) and (4),
30 respectively, and new subsection (2) is added to said section,
31 to read:

1 440.42 Insurance policies; liability.--
2 (2) A workers' compensation insurance policy may
3 require the employer to release certain employment and wage
4 information maintained by the state pursuant to federal and
5 state unemployment compensation laws except to the extent
6 prohibited or limited under federal law. By entering into a
7 workers' compensation insurance policy with such a provision,
8 the employer consents to the release of the information. The
9 insurance carrier requiring such consent shall safeguard the
10 information and maintain its confidentiality. The carrier
11 shall limit use of the information to verifying compliance
12 with the terms of the workers' compensation insurance policy.
13 The department may charge a fee to cover the cost of
14 disclosing the information.

15 Section 11. Section 440.45, Florida Statutes, is
16 amended to read:

17 440.45 Office of the Judges of Compensation Claims.--

18 (1) There is hereby created the Office of the Judges
19 of Compensation Claims within the Department of Labor and
20 Employment Security. The Office of the Judges of Compensation
21 Claims shall be headed by a Chief Judge ~~who shall serve at the~~
22 ~~pleasure of the Governor and Cabinet.~~ The Chief Judge shall
23 be appointed by the Governor for a term of 4 years ~~and~~
24 ~~confirmed by the Cabinet~~ from a list of three ~~two~~ names
25 submitted by the statewide nominating commission created under
26 subsection (2) each of the District Court Judicial Nominating
27 Commissions created by s. 2, Art. V of the State Constitution
28 and s. 43.29. The Chief Judge must possess the same
29 qualifications for appointment as a judge of compensation
30 claims, and the procedure for reappointment of the Chief Judge
31 will be the same as for reappointment of a judge of

1 compensation claims.The office shall be a separate budget
 2 entity and the Chief Judge shall be its agency head for all
 3 purposes. The Department of Labor and Employment Security
 4 shall provide administrative support and service to the office
 5 to the extent requested by the Chief Judge but shall not
 6 direct, supervise, or control the Office of the Judges of
 7 Compensation Claims in any manner, including but not limited
 8 to personnel, purchasing, budgetary matters, or property
 9 transactions. The operating budget of the Office of the Judges
 10 of Compensation Claims shall be paid out of the Workers'
 11 Compensation Administration Trust Fund established in s.
 12 440.50.

13 (2)(a) The Governor shall appoint full-time judges of
 14 compensation claims to conduct proceedings as required by this
 15 chapter or other law. No person may be nominated to serve
 16 ~~appointed~~ as a judge of compensation claims unless he or she
 17 has been a member of The Florida Bar in good standing ~~for the~~
 18 ~~preceding 5 years~~ and is knowledgeable in the practice of law
 19 of workers' compensation. No judge of compensation claims
 20 shall engage in the private practice of law during a term of
 21 office.

22 (b) Except as provided in paragraph (c),the Governor
 23 shall ~~initially~~ appoint a judge of compensation claims from a
 24 list of three persons nominated by a statewide nominating
 25 commission. The statewide nominating commission shall be
 26 composed of the following:

27 1. Five ~~5~~ members, at least one of whom must be a
 28 member of a minority group as defined in s. 288.703(3), one of
 29 each who resides in each of the territorial jurisdictions of
 30 the district courts of appeal, appointed by the Board of
 31 Governors of The Florida Bar from among The Florida Bar

1 members who are engaged in the practice of law. On July 1,
 2 1999, the term of office of each person appointed by the Board
 3 of Governors of The Florida Bar to the commission expires. The
 4 Board of Governors shall appoint members who reside in the
 5 odd-numbered district court of appeal jurisdictions to 4-year
 6 terms each, beginning July 1, 1999, and members who reside in
 7 the even-numbered district court of appeal jurisdictions to
 8 2-year terms each, beginning July 1, 1999. Thereafter, each
 9 member shall be appointed for a 4-year term;

10 2. Five 5 electors, at least one of whom must be a
 11 member of a minority group as defined in s. 288.703(3), one of
 12 each who resides in each of the territorial jurisdictions of
 13 the district courts of appeal, appointed by the Governor. On
 14 July 1, 1999, the term of office of each person appointed by
 15 the Governor to the commission expires. The Governor shall
 16 appoint members who reside in the odd-numbered district court
 17 of appeal jurisdictions to 2-year terms each, beginning July
 18 1, 1999, and members who reside in the even-numbered district
 19 court of appeal jurisdictions to 4-year terms each, beginning
 20 July 1, 1999. Thereafter, each member shall be appointed for a
 21 4-year term; and

22 3. Five 5 electors, at least one of whom must be a
 23 member of a minority group as defined in s. 288.703(3), one of
 24 each who resides in the territorial jurisdictions of the
 25 district courts of appeal, selected and appointed by a
 26 majority vote of the other 10 members of the commission. On
 27 October 1, 1999, the term of office of each person appointed
 28 to the commission by its other members expires. A majority of
 29 the other members of the commission shall appoint members who
 30 reside in the odd-numbered district court of appeal
 31 jurisdictions to 2-year terms each, beginning October 1, 1999,

1 and members who reside in the even-numbered district court of
 2 appeal jurisdictions to 4-year terms each, beginning October
 3 1, 1999. Thereafter, each member shall be appointed for a
 4 4-year term.

5
 6 A vacancy occurring on the commission shall be filled by the
 7 original appointing authority for the unexpired balance of the
 8 term. No attorney who appears before any judge of compensation
 9 claims more than four times a year is eligible to serve on the
 10 statewide nominating commission. The meetings and
 11 determinations of the nominating commission as to the judges
 12 of compensation claims shall be open to the ~~general~~ public.

13 (c) Each judge of compensation claims shall be
 14 appointed for a term of 4 years, but during the term of office
 15 may be removed by the Governor for cause. Prior to the
 16 expiration of a judge's term of office, the statewide
 17 nominating commission shall review the judge's conduct and
 18 determine whether the judge's performance is satisfactory. If
 19 the judge's performance is deemed satisfactory, the commission
 20 shall report its finding to the Governor no later than 6
 21 months prior to the expiration of the judge's term of office.
 22 The Governor shall review the commission's report and may
 23 reappoint the judge for an additional 4-year term. If the
 24 Governor does not reappoint the judge, the Governor shall
 25 inform the commission. The judge shall remain in office until
 26 the Governor has appointed a successor judge in accordance
 27 with paragraphs (a) and (b). ~~The report of the commission~~
 28 ~~shall include a list of three candidates for appointment. The~~
 29 ~~candidates shall include the judge whose term is expiring, if~~
 30 ~~that judge desires reappointment and the judge's performance~~
 31 ~~is satisfactory upon review by the commission.~~ If a vacancy

1 occurs during a judge's unexpired term, the statewide
 2 nominating commission does not find the judge's performance is
 3 satisfactory, or the governor does not reappoint the judge,
 4 ~~the commission shall issue a report to the Governor shall~~
 5 appoint a successor judge for a term of 4 years in accordance
 6 with paragraph (b) which includes a list of three candidates
 7 ~~for appointment. The Governor shall review the commission's~~
 8 ~~report, and may select one of the listed candidates. If no~~
 9 ~~candidate is selected, the Governor shall so inform the~~
 10 ~~commission, which shall within 2 months issue a report to the~~
 11 ~~Governor which includes a list of three different candidates~~
 12 ~~for appointment.~~

13 (3) The Chief Judge shall select from among the full
 14 time judges of the office two or more judges to rotate as
 15 docketing judges. Docketing judges shall review all claims for
 16 benefits for consistency with the requirements of this chapter
 17 and the rules of procedure, including but not limited to
 18 specificity requirements, and shall dismiss any claim that
 19 fails to comport with such rules and requirements. The
 20 docketing judge shall not dismiss any claim with prejudice
 21 without offering the parties an opportunity to appear and
 22 present argument. The Chief Judge may as he or she deems
 23 appropriate expand the duties of the docketing judges to
 24 include resolution without hearing of other types of
 25 procedural and substantive matters, including resolution of
 26 fee disputes.

27 (4) The Chief Judge shall have the discretion to
 28 require mediation and to designate qualified persons to act as
 29 mediators in any dispute pending before the judges of
 30 compensation claims and the division. The Chief Judge shall
 31 coordinate with the Director of the Division of Workers'

1 Compensation to establish a mandatory mediation program to
2 facilitate early and efficient resolution of disputes arising
3 under this chapter and to establish training and continuing
4 education for new and sitting judges.

5 (5) The Office of the Judges of Compensation Claims
6 shall promulgate rules to effect the purposes of this section.
7 Such rules shall include procedural rules applicable to
8 workers' compensation claim resolution and uniform criteria
9 for measuring the performance of the office, including but not
10 limited to the number of cases assigned and disposed, the age
11 of pending and disposed cases, timeliness of decisionmaking,
12 extraordinary fee awards and other performance indicators. The
13 workers' compensation rules of procedure approved by the
14 Supreme Court shall apply until the rules promulgated by the
15 Office of the Judges of Compensation Claims pursuant to this
16 section become effective.

17 (6) Not later than December 1 of each year, the Office
18 of the Judges of Compensation Claims and the Division of
19 Workers' Compensation shall jointly issue a written report to
20 the Governor, the House of Representatives, and the Senate
21 summarizing the amount, cost, and outcome of all litigation
22 resolved in the prior year, summarizing the disposition of
23 applications and motions for mediation conferences and
24 recommending changes or improvements to the dispute resolution
25 elements of the Workers' Compensation Law and regulations.

26 Section 12. On July 1, 1999, the term of office of the
27 Chief Judge of Compensation Claims expires. The statewide
28 nominating commission is directed to submit a list of three
29 names to the Governor pursuant to section 440.45(1), Florida
30 Statutes, by March 1, 1999.

31

1 Section 13. The revised process for nomination and
2 appointment of judges of compensation claims, as provided in
3 the amendments to section 440.45(2)(c), Florida Statutes,
4 shall take effect on July 1, 1999.

5 Section 14. Any member of the statewide nominating
6 commission whose term of office expires as a result of the
7 amendment of section 440.45, Florida Statutes, by this act is
8 eligible for reappointment.

9 Section 15. Subsection (9) is added to section
10 626.989, Florida Statutes, to read:

11 626.989 Division of Insurance Fraud; definition;
12 investigative, subpoena powers; protection from civil
13 liability; reports to division; division investigator's power
14 to execute warrants and make arrests.--

15 (9) In recognition of the complementary roles of
16 investigating instances of workers' compensation fraud and
17 enforcing compliance with the workers' compensation coverage
18 requirements under chapter 440, the Division of Insurance
19 Fraud of the Department of Insurance and the Division of
20 Workers' Compensation of the Department of Labor and
21 Employment Security are directed to prepare and submit a joint
22 performance report to the President of the Senate and the
23 Speaker of the House of Representatives by November 1 of each
24 year for each of the next 2 years, and then every 3 years
25 thereafter, describing the results obtained in achieving
26 compliance with the workers' compensation coverage
27 requirements and reducing the incidence of workers'
28 compensation fraud.

29 Section 16. Subsection (5) is added to section
30 627.413, Florida Statutes, to read:
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1 627.413 Contents of policies, in general;
2 identification.--

3 (5) Any policy that is a minimum premium policy issued
4 by an insurer pursuant to the minimum premium provisions of
5 rules adopted by rating organizations licensed by the
6 Department of Insurance, shall have typed, printed, stamped,
7 or legibly handwritten on the certificate the words "minimum
8 premium policy" or equivalent language. The department may
9 impose an administrative fine pursuant to s. 624.4211 if the
10 department finds any violation of this subsection.

11 Section 17. Paragraph (h) is added to subsection (2)
12 of section 775.15, Florida Statutes, to read:

13 775.15 Time limitations.--

14 (2) Except as otherwise provided in this section,
15 prosecutions for other offenses are subject to the following
16 periods of limitation:

17 (h) A prosecution for a felony violation of s. 440.105
18 must be commenced within 5 years after the violation is
19 committed.

20 Section 18. Effective July 1, 1998, the Division of
21 Workers' Compensation shall notify all persons holding a
22 construction industry certificate of election of exemption of
23 the requirements of section 440.05, Florida Statutes, as
24 amended by this act.

25 Section 19. There is hereby appropriated to the
26 Department of Labor and Employment Security from the Workers'
27 Compensation Administration Trust Fund for the fiscal year
28 1998-1999, 15 positions and \$1,100,000 to carry out the
29 provisions of this act. This section shall take effect July
30 1, 1998.

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1 Section 20. Except as otherwise provided in this act,
2 this act shall take effect January 1, 1999.

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