

By the Committee on Insurance and Representatives Bainter,  
Lawson, Patterson, Waters, Goode, Cosgrove and Wiles

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.02, F.S.; revising definitions;  
4           amending s. 440.09, F.S.; excluding employees  
5           covered under the Defense Base Act; amending s.  
6           440.102, F.S.; providing requirements and  
7           procedures for conducting certain drug tests  
8           and for reporting and preserving results of  
9           drug tests; requiring certain contractors under  
10          state contract to implement a drug-free  
11          workplace; amending s. 440.12, F.S.; providing  
12          for electronic payment of compensation  
13          payments; amending s. 440.13, F.S.; revising  
14          requirements for submission of certain medical  
15          reports and bills; granting rehabilitation  
16          providers access to medical records; amending  
17          s. 440.134, F.S.; authorizing individually  
18          self-insured employers to provide medical  
19          benefits with or without managed care  
20          arrangements; amending s. 440.14, F.S.;  
21          requiring employees to provide certain loss of  
22          earnings information for purposes of certain  
23          average weekly wage calculations; amending s.  
24          440.15, F.S.; clarifying provisions relating to  
25          permanent total disability supplemental  
26          benefits; amending s. 440.185, F.S.;  
27          authorizing the division to contract with a  
28          private entity for collection of certain policy  
29          information; amending s. 440.192, F.S.;  
30          revising requirements and procedures for filing  
31          petitions for benefits; amending s. 440.20,

1 F.S.; providing for payment of compensation by  
2 direct deposit under certain circumstances;  
3 revising the period for payment; revising lump  
4 sum settlement requirements; amending s.  
5 440.25, F.S.; imposing a timeframe for certain  
6 pretrial hearings; amending s. 440.271, F.S.;  
7 directing the First District Court of Appeals  
8 to establish a specialized division for certain  
9 purposes; amending s. 440.34, F.S.; revising  
10 terms to conform; amending ss. 440.49 and  
11 440.51, F.S.; providing definitions relating to  
12 net premiums; amending s. 627.311, F.S.;  
13 providing for use of surplus for purposes of  
14 funding certain deficits; repealing s.  
15 440.45(3), F.S., relating to judges of  
16 compensation claims serving as docketing  
17 judges; providing effective dates.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Subsection (27) and paragraph (f) of  
22 subsection (37) of section 440.02, Florida Statutes, 1998  
23 Supplement, are amended to read:

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:

27 (27) "Wages" means the money rate at which the service  
28 rendered is recompensed under the contract of hiring in force  
29 at the time of the injury and includes only the wages earned  
30 and reported for federal income tax purposes on the job where  
31 the employee is injured and the wages lost as a result of the

1 injury at any other concurrent employment where he or she is  
2 also subject to workers' compensation coverage and benefits,  
3 together with the reasonable value of housing furnished to the  
4 employee by the employer which is the permanent year-round  
5 residence of the employee, and gratuities to the extent  
6 reported to the employer in writing as taxable income received  
7 in the course of employment from others than the employer and  
8 employer contributions for health insurance for the employee  
9 or the employee's dependents. However, housing furnished to  
10 migrant workers shall be included in wages unless provided  
11 after the time of injury. In employment in which an employee  
12 receives consideration for housing, the reasonable value of  
13 such housing compensation shall be the actual cost to the  
14 employer or based upon the Fair Market Rent Survey promulgated  
15 pursuant to s. 8 of the Housing and Urban Development Act of  
16 1974, whichever is less. However, if employer contributions  
17 for housing or health insurance are continued after the time  
18 of the injury, the contributions are not "wages" for the  
19 purpose of calculating an employee's average weekly wage.

20 (37) "Catastrophic injury" means a permanent  
21 impairment constituted by:

22 (f) Any other injury that results in the Social  
23 Security Administration determining an employee eligible would  
24 ~~otherwise qualify under this chapter of a nature and severity~~  
25 ~~that would qualify an employee~~ to receive disability income  
26 benefits under Title II or supplemental security income  
27 benefits under Title XVI of the federal Social Security Act as  
28 the Social Security Act existed on July 1, 1992, without  
29 regard to any time limitations provided under that act. In  
30 order for an injury to qualify as a "catastrophic injury"  
31 under this paragraph, there must be a causal connection

1 between the injury which serves as the basis for a Social  
2 Security Administration determination of eligibility and the  
3 compensable injury.

4 Section 2. Subsection (2) of section 440.09, Florida  
5 Statutes, 1998 Supplement, is amended to read:

6 440.09 Coverage.--

7 (2) Benefits are not payable in respect of the  
8 disability or death of any employee covered by the Federal  
9 Employer's Liability Act, the Longshoremen's and Harbor  
10 Worker's Compensation Act, the Defense Base Act, or the Jones  
11 Act.

12 Section 3. The introductory paragraph of section  
13 440.102, Florida Statutes, and paragraphs (d), (e), and (o) of  
14 subsection (5) are amended, and subsection (15) is added to  
15 said section, to read:

16 440.102 Drug-free workplace program requirements.--The  
17 following provisions apply to a drug-free workplace program  
18 implemented under the ~~pursuant to~~ law or under ~~to~~ rules  
19 adopted by the Agency for Health Care Administration:

20 (5) PROCEDURES AND EMPLOYEE PROTECTION.--All specimen  
21 collection and testing for drugs under this section shall be  
22 performed in accordance with the following procedures:

23 (d)1. Each initial drug test and confirmation test  
24 conducted under this section, not including the taking or  
25 collecting of a specimen to be tested, shall be conducted by a  
26 licensed or certified laboratory as described in subsection  
27 (9), except an initial drug test may be conducted on the  
28 employer's premises in accordance with procedures in this  
29 subsection and rules and guidelines adopted by the Agency for  
30 Health Care Administration for the protection of employees.  
31 If the initial drug test is conducted on the employer's

1 premises and produces a positive test result, a confirmation  
2 test must be conducted by a licensed or certified laboratory  
3 as described in subsection (9). An employer shall not take  
4 any adverse action against an employee based on an initial  
5 drug test producing positive results until a confirmation test  
6 producing positive results has been conducted.

7 2. An employer having initial drug tests conducted on  
8 the employer's premises shall:

9 a. Conduct the test in view of the person being tested  
10 if possible. If it is not possible to conduct the test in view  
11 of the person being tested, the person conducting the test  
12 must secure the specimen, in view of the person being tested,  
13 with a forensic tamperproof seal until the test is conducted.

14 b. Provide the results to the person tested.

15 c. Maintain records as specified by the Agency for  
16 Health Care Administration sufficient to demonstrate that the  
17 employer is conducting the types of tests required by this  
18 section.

19 (e) A specimen for a drug test may be taken or  
20 collected by any of the following persons:

21 1. A physician, a physician assistant, a registered  
22 professional nurse, a licensed practical nurse, or a nurse  
23 practitioner or a certified paramedic who is present at the  
24 scene of an accident for the purpose of rendering emergency  
25 medical service or treatment;~~;~~

26 2. A qualified person employed by a licensed or  
27 certified laboratory as described in subsection (9); ~~or~~

28 3. In addition to those persons authorized under  
29 subparagraphs 1. and 2., employees specially trained to  
30 collect specimens and conduct drug tests or other persons  
31 similarly trained, in the case of an initial drug test

1 conducted on the employer's premises. Employees or other  
2 persons utilized to conduct an initial drug test must have  
3 received a minimum of 2 hours of training in the  
4 administration of a drug test, preparation of the collection  
5 site, collection of specimens, detection of any tampering or  
6 adulteration of the specimen, labeling of specimens, and  
7 preservation of the chain of custody for specimens, or other  
8 specific training as required by the Agency for Health Care  
9 Administration.

10 (o) If an employer conducts drug testing that is  
11 ~~conducted~~ based on reasonable suspicion, the employer shall  
12 promptly detail in writing the circumstances which formed the  
13 basis of the determination that reasonable suspicion existed  
14 to warrant the testing. A copy of this documentation shall be  
15 given to the employee upon request and the original  
16 documentation shall be kept confidential by the employer  
17 pursuant to subsection (8) and shall be retained by the  
18 employer for at least 1 year.

19 (15) STATE CONSTRUCTION CONTRACTS.--Contractors, as  
20 defined and regulated in parts I and II of chapter 489, with  
21 more than three employees performing construction work  
22 pursuant to a state contract in excess of \$10,000, which  
23 contract was let pursuant to chapter 235, chapter 255, or  
24 chapter 944, shall be required to implement a drug-free  
25 workplace program in accordance with the requirements of this  
26 section.

27 Section 4. Subsection (1) of section 440.12, Florida  
28 Statutes, is amended to read:

29 440.12 Time for commencement and limits on weekly rate  
30 of compensation.--

31

1           (1) No compensation shall be allowed for the first 7  
2 days of the disability, except benefits provided for in s.  
3 440.13. However, if the injury results in disability of more  
4 than 21 days, compensation shall be allowed from the  
5 commencement of the disability. All weekly compensation  
6 payments, except for the first payment, shall be paid by check  
7 or, if authorized by the employee, deposited directly into the  
8 employee's bank account or a bank account set up by the  
9 carrier for the employee.

10           Section 5. Paragraphs (b) and (c) of subsection (4) of  
11 section 440.13, Florida Statutes, 1998 Supplement, are amended  
12 to read:

13           440.13 Medical services and supplies; penalty for  
14 violations; limitations.--

15           (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH  
16 DIVISION.--

17           (b) Upon the request of the Division of Workers'  
18 Compensation, each medical report or bill obtained or received  
19 by the employer, the carrier, or the injured employee, or the  
20 attorney for the employer, carrier, or injured employee, with  
21 respect to the remedial treatment or care of the injured  
22 employee, including any report of an examination, diagnosis,  
23 or disability evaluation, must be filed with the Division of  
24 Workers' Compensation pursuant to rules adopted by the  
25 division. The health care provider shall ~~also~~ furnish to the  
26 injured employee or to his or her attorney, on demand, a copy  
27 of his or her office chart, records, and reports, and may  
28 charge the injured employee an amount authorized by the  
29 division for the copies. Each ~~such~~ health care provider shall  
30 provide to the division ~~any additional~~ information about the  
31

1 remedial treatment, care, and attendance that the division  
2 reasonably requests.

3 (c) It is the policy for the administration of the  
4 workers' compensation system that there be reasonable access  
5 to medical information by all parties to facilitate the  
6 self-executing features of the law. Notwithstanding the  
7 limitations in s. 455.667 and subject to the limitations in s.  
8 381.004, upon the request of the employer, the carrier, a  
9 rehabilitation provider, or the attorney for the employer or  
10 carrier ~~either of them~~, the medical records of an injured  
11 employee must be furnished to those persons and the medical  
12 condition of the injured employee must be discussed with those  
13 persons, if the records and the discussions are restricted to  
14 conditions relating to the workplace injury. Any such  
15 discussions may be held before or after the filing of a claim  
16 without the knowledge, consent, or presence of any other party  
17 or his or her agent or representative. A health care provider  
18 who willfully refuses to provide medical records or to discuss  
19 the medical condition of the injured employee, after a  
20 reasonable request is made for such information pursuant to  
21 this subsection, shall be subject by the division to one or  
22 more of the penalties set forth in paragraph (8)(b).

23 Section 6. Paragraph (b) of subsection (2) of section  
24 440.134, Florida Statutes, 1998 Supplement, is amended to  
25 read:

26 440.134 Workers' compensation managed care  
27 arrangement.--

28 (2)

29 (b) Effective January 1, 1997, the employer shall,  
30 subject to the limitations specified elsewhere in this  
31 chapter, furnish to the employee solely through managed care



1 arrangements such medically necessary remedial treatment,  
2 care, and attendance for such period as the nature of the  
3 injury or the process of recovery requires pursuant to s.  
4 440.13(2)(a) and (b). An employer that has secured coverage  
5 under s. 440.38(1)(b) as an individual self-insurer or under  
6 s. 440.38(6) shall furnish such medically necessary remedial  
7 treatment, care, and attendance to the employee for such a  
8 period as the nature or process of recovery may require  
9 pursuant to s. 440.13(2)(a) and (b) through managed care  
10 arrangements or without managed care arrangements. Nothing in  
11 this subsection shall be construed to prevent an individual  
12 self-insurer from implementing or continuing to use managed  
13 care arrangements in accordance with this section.

14 Section 7. Subsection (5) is added to section 440.14,  
15 Florida Statutes, to read:

16 440.14 Determination of pay.--

17 (5) If lost wages from concurrent employment are used  
18 in calculating the average weekly wage, the employee shall be  
19 responsible for providing evidence of the loss of earnings  
20 from the concurrent employment to the employer or carrier  
21 within 45 days after the date of injury. Failure to provide  
22 such information will result in exclusion of the earnings from  
23 concurrent employment from the average weekly wage  
24 calculation.

25 Section 8. Paragraph (f) of subsection (1) of section  
26 440.15, Florida Statutes, 1998 Supplement, is amended to read:

27 440.15 Compensation for disability.--Compensation for  
28 disability shall be paid to the employee, subject to the  
29 limits provided in s. 440.12(2), as follows:

30 (1) PERMANENT TOTAL DISABILITY.--

31

1           (f)1. If permanent total disability results from  
2 injuries that occurred subsequent to June 30, 1955, and for  
3 which the liability of the employer for compensation has not  
4 been discharged under s. 440.20(12), the injured employee  
5 shall receive additional weekly compensation benefits equal to  
6 5 percent of her or his weekly compensation rate, as  
7 established pursuant to the law in effect on the date of her  
8 or his injury, multiplied by the number of calendar years  
9 since the date of injury. The weekly compensation payable and  
10 the additional benefits payable under this paragraph, when  
11 combined, may not exceed the maximum weekly compensation rate  
12 in effect at the time of payment as determined pursuant to s.  
13 440.12(2). Entitlement to these supplemental payments shall  
14 cease at age 62 if the employee is eligible for social  
15 security benefits under 42 U.S.C. s. ss-402 or s. and 423,  
16 whether or not the employee has applied for such benefits.  
17 These supplemental benefits shall be paid by the division out  
18 of the Workers' Compensation Administration Trust Fund when  
19 the injury occurred subsequent to June 30, 1955, and before  
20 July 1, 1984. These supplemental benefits shall be paid by the  
21 employer when the injury occurred on or after July 1, 1984.  
22 Supplemental benefits are not payable for any period prior to  
23 October 1, 1974.

24           2.a. The division shall provide by rule for the  
25 periodic reporting to the division of all earnings of any  
26 nature and social security income by the injured employee  
27 entitled to or claiming additional compensation under  
28 subparagraph 1. Neither the division nor the employer or  
29 carrier shall make any payment of those additional benefits  
30 provided by subparagraph 1. for any period during which the  
31

1 employee willfully fails or refuses to report upon request by  
2 the division in the manner prescribed by such rules.

3           b. The division shall provide by rule for the periodic  
4 reporting to the employer or carrier of all earnings of any  
5 nature and social security income by the injured employee  
6 entitled to or claiming benefits for permanent total  
7 disability. The employer or carrier is not required to make  
8 any payment of benefits for permanent total disability for any  
9 period during which the employee willfully fails or refuses to  
10 report upon request by the employer or carrier in the manner  
11 prescribed by such rules or if any employee who is receiving  
12 permanent total disability benefits refuses to apply for or  
13 cooperate with the employer or carrier in applying for social  
14 security benefits.

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

20           Section 9. Subsection (7) of section 440.185, Florida  
21 Statutes, 1998 Supplement, is amended to read:

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

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

1 for the collection of policy information required to be filed  
2 by carriers pursuant to this subsection and the receipt of  
3 notices of cancellation or expiration of a policy required to  
4 be filed by carriers pursuant to s. 440.42(2). The provision  
5 of policy information or notices of cancellation or expiration  
6 to the contracted private entity shall satisfy the filing  
7 requirements of this subsection and s. 440.42(2).

8 Section 10. Subsections (1), (3), (4), and (8) of  
9 section 440.192, Florida Statutes, are amended to read:

10 440.192 Procedure for resolving benefit disputes.--

11 (1) Subject to s. 440.191, any employee who has not  
12 received a benefit to which the employee believes she or he is  
13 entitled under this chapter shall file by certified mail with  
14 the appropriate local Office of the Judges of Compensation  
15 Claims a petition for benefits that meets the requirements of  
16 this section. The division shall provide information to  
17 employees regarding the location of the appropriate Office of  
18 the Judges of Compensation Claims for purposes of filing a  
19 petition for benefits. The employee shall also serve copies  
20 of the petition for benefits by certified mail upon the  
21 employer, the employer's carrier, and the division in  
22 ~~Tallahassee a petition for benefits that meets the~~  
23 ~~requirements of this section. The division shall refer the~~  
24 ~~petition to the Office of the Judges of Compensation Claims.~~

25 (3) A petition for benefits may contain a claim for  
26 past benefits and continuing benefits in any benefit category,  
27 but is limited to those in default and ripe, due, and owing on  
28 the date the petition is filed. If the employer has elected to  
29 satisfy its obligation to provide medical treatment, care, and  
30 attendance through a managed care arrangement designated under  
31 this chapter, the employee must exhaust all managed care

1 grievance procedures before filing a petition for benefits  
2 under this section. Failure to exhaust managed care grievance  
3 procedures shall result in dismissal of the petition without  
4 prejudice.

5 (4) The petition must include a certification by the  
6 claimant or, if the claimant is represented by counsel, the  
7 claimant's attorney, stating that the claimant, ~~or attorney if~~  
8 ~~the claimant is represented by counsel,~~ has made a good faith  
9 effort to resolve the dispute and that the claimant or  
10 attorney was unable to resolve the dispute with the carrier.  
11 The petition shall also include a certification by the  
12 claimant or, if the claimant is represented by counsel, the  
13 claimant's attorney, stating that the managed care grievance  
14 procedures have been exhausted. If such certifications are  
15 not included, the petition shall be dismissed without  
16 prejudice.

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

1           Section 11. Paragraph (a) of subsection (1),  
2 subsections (6) and (7), and paragraph (a) of subsection (11)  
3 of section 440.20, Florida Statutes, 1998 Supplement, are  
4 amended to read:

5           440.20 Time for payment of compensation; penalties for  
6 late payment.--

7           (1)(a) Unless it denies compensability or entitlement  
8 to benefits, the carrier shall pay compensation directly to  
9 the employee as required by ss. 440.14, 440.15, and 440.16, in  
10 accordance with the obligations set forth in such sections. If  
11 authorized by the employee, the carrier's obligation to pay  
12 compensation directly to the employee is satisfied when the  
13 carrier directly deposits, by electronic transfer or other  
14 means, compensation into the employee's bank account or into a  
15 bank account which has been set up by the carrier for the  
16 employee. Compensation by direct deposit shall be deemed paid  
17 on the date the funds become available for withdrawal by the  
18 employee.

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

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

23 (7) If any compensation, payable under the terms of an  
24 award, is not paid within 15 ~~7~~ days after it becomes due,  
25 there shall be added to such unpaid compensation an amount  
26 equal to 20 percent thereof, which shall be paid at the same  
27 time as, but in addition to, such compensation, unless review  
28 of the compensation order making such award is had as provided  
29 in s. 440.25.

30 (11)(a) Upon joint petition of all interested parties,  
31 a lump-sum payment in exchange for the employer's or carrier's

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



1 claims and shall submit to the Legislature a summary of all  
2 such reports filed under this subsection annually by September  
3 15.

4 Section 12. Paragraph (a) of subsection (4) of section  
5 440.25, Florida Statutes, is amended to read:

6 440.25 Procedures for mediation and hearings.--

7 (4)(a) If, on the 10th day following commencement of  
8 mediation, the questions in dispute have not been resolved,  
9 the judge of compensation claims shall hold a pretrial  
10 hearing. The judge of compensation claims shall give the  
11 interested parties at least 7 days' advance notice of the  
12 pretrial hearing which shall be held no later than 45 days  
13 after the filing of the petition for benefits ~~by mail~~. At the  
14 pretrial hearing, the judge of compensation claims shall,  
15 subject to paragraph (b), set a date for the final hearing  
16 that allows the parties at least 30 days to conduct discovery  
17 unless the parties consent to an earlier hearing date.

18 Section 13. Section 440.271, Florida Statutes, is  
19 amended to read:

20 440.271 Appeal of order of judge of compensation  
21 claims.--Review of any order of a judge of compensation claims  
22 entered pursuant to this chapter shall be by appeal to the  
23 District Court of Appeal, First District. To promote  
24 consistency and uniformity in the application of this chapter,  
25 the District Court of Appeal, First District, shall establish  
26 a specialized division to hear all appeals of orders of judges  
27 of compensation claims. The court may structure the division  
28 to hear workers' compensation appeals exclusively, or in  
29 addition to other appeals. Appeals shall be filed in  
30 accordance with rules of procedure prescribed by the Supreme  
31 Court for review of such orders. The division shall be given

1 notice of any proceedings pertaining to s. 440.25, regarding  
2 indigency, or s. 440.49, regarding the Special Disability  
3 Trust Fund, and shall have the right to intervene in any  
4 proceedings.

5 Section 14. Subsection (3) of section 440.34, Florida  
6 Statutes, is amended to read:

7 440.34 Attorney's fees; costs.--

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

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

21 (b) In any case in which the employer or carrier files  
22 a response to petition ~~notice of denial~~ with the division and  
23 the injured person has employed an attorney in the successful  
24 prosecution of the 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 Section 15. Effective upon this act becoming a law,  
8 paragraph (b) of subsection (9) of section 440.49, Florida  
9 Statutes, 1998 Supplement, is amended to read:

10 440.49 Limitation of liability for subsequent injury  
11 through Special Disability Trust Fund.--

12 (9) SPECIAL DISABILITY TRUST FUND.--

13 (b)1. The Special Disability Trust Fund shall be  
14 maintained by annual assessments upon the insurance companies  
15 writing compensation insurance in the state, the commercial  
16 self-insurers under ss. 624.462 and 624.4621, the assessable  
17 mutuals under s. 628.601, and the self-insurers under this  
18 chapter, which assessments shall become due and be paid  
19 quarterly at the same time and in addition to the assessments  
20 provided in s. 440.51. The division shall estimate annually in  
21 advance the amount necessary for the administration of this  
22 subsection and the maintenance of this fund and shall make  
23 such assessment in the manner hereinafter provided.

24 2. The annual assessment shall be calculated to  
25 produce during the ensuing fiscal year an amount which, when  
26 combined with that part of the balance in the fund on June 30  
27 of the current fiscal year which is in excess of \$100,000, is  
28 equal to the average of:

29 a. The sum of disbursements from the fund during the  
30 immediate past 3 calendar years, and

31

1           b. Two times the disbursements of the most recent  
2 calendar year.

3  
4 Such amount shall be prorated among the insurance companies  
5 writing compensation insurance in the state and the  
6 self-insurers.

7           3. The net premiums written by the companies for  
8 workers' compensation in this state and the net premium  
9 written applicable to the self-insurers in this state are the  
10 basis for computing the amount to be assessed as a percentage  
11 of net premiums. Such payments shall be made by each insurance  
12 company and self-insurer to the division for the Special  
13 Disability Trust Fund in accordance with such regulations as  
14 the division prescribes. For purposes of this subsection, "net  
15 premiums written" means direct gross premiums written in this  
16 state on insurance policies to which this chapter applies,  
17 less return premiums thereon and dividends paid or credited to  
18 policyholders on such direct business. "Net premiums written"  
19 does not include premiums on contracts between insurers and  
20 reinsurers. When reporting "net premiums written" for  
21 purposes of computing the assessment, full policy premium  
22 value must be reported prior to application of deductible  
23 discounts.

24           4. The Treasurer is authorized to receive and credit  
25 to such Special Disability Trust Fund any sum or sums that may  
26 at any time be contributed to the state by the United States  
27 under any Act of Congress, or otherwise, to which the state  
28 may be or become entitled by reason of any payments made out  
29 of such fund.

30  
31

1           Section 16. Effective upon this act becoming a law,  
2 paragraph (b) of subsection (1) of section 440.51, Florida  
3 Statutes, is amended to read:

4           440.51 Expenses of administration.--

5           (1) The division shall estimate annually in advance  
6 the amounts necessary for the administration of this chapter,  
7 in the following manner.

8           (b) The total expenses of administration shall be  
9 prorated among the insurance companies writing compensation  
10 insurance in the state and self-insurers. The net premiums  
11 collected by the companies and the amount of premiums a  
12 self-insurer would have to pay if insured are the basis for  
13 computing the amount to be assessed. This amount may be  
14 assessed as a specific amount or as a percentage of net  
15 premiums payable as the division may direct, provided such  
16 amount so assessed shall not exceed 4 percent of such net  
17 premiums. The insurance companies may elect to make the  
18 payments required under s. 440.15(1)(e) rather than having  
19 these payments made by the division. In that event, such  
20 payments will be credited to the insurance companies, and the  
21 amount due by the insurance company under this section will be  
22 reduced accordingly. For purposes of this subsection, "net  
23 premiums collected" means direct gross premiums written in  
24 this state on insurance policies to which this chapter  
25 applies, less return premiums thereon and dividends paid or  
26 credited to policyholders on such direct business. "Net  
27 premiums collected" does not include premiums on contracts  
28 between insurers and reinsurers. When reporting "net premiums  
29 collected" for purposes of computing the assessment, full  
30 policy premium value must be reported prior to application of  
31 deductible discounts.

1           Section 17. Paragraphs (g) and (p) of subsection (4)  
2 of section 627.311, Florida Statutes, 1998 Supplement, is  
3 amended to read:

4           627.311 Joint underwriters and joint reinsurers.--

5           (4)

6           (g) Whenever a deficit exists, the plan shall, within  
7 90 days, provide the department with a program to eliminate  
8 the deficit within a reasonable time. The deficit may be  
9 funded both through increased premiums charged to insureds of  
10 the plan for subsequent years, through the use of policyholder  
11 surplus attributable to any year, and through assessments on  
12 insureds in the plan if the plan uses assessable policies.

13           (p) Neither the plan nor any member of the board of  
14 governors is liable for monetary damages to any person for any  
15 statement, vote, decision, or failure to act, regarding the  
16 management or policies of the plan, unless:

17           1. The member breached or failed to perform her or his  
18 duties as a member; and

19           2. The member's breach of, or failure to perform,  
20 duties constitutes:

21           a. A violation of the criminal law, unless the member  
22 had reasonable cause to believe her or his conduct was not  
23 unlawful. A judgment or other final adjudication against a  
24 member in any criminal proceeding for violation of the  
25 criminal law estops that member from contesting the fact that  
26 her or his breach, or failure to perform, constitutes a  
27 violation of the criminal law; but does not estop the member  
28 from establishing that she or he had reasonable cause to  
29 believe that her or his conduct was lawful or had no  
30 reasonable cause to believe that her or his conduct was  
31 unlawful;

