

By Senator King

8-1297-00

See HB

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.02, F.S.; revising a monetary
4 limit in a definition; excluding work done by
5 state prisoners and county inmates from the
6 definition of employment; amending s. 440.09,
7 F.S.; excluding employees covered under the
8 Defense Base Act from payment of benefits;
9 amending s. 440.12, F.S.; providing for
10 electronic payment of compensation payments;
11 amending s. 440.13, F.S.; revising requirements
12 for submission of certain medical reports and
13 bills; granting rehabilitation providers access
14 to medical records; amending s. 440.134, F.S.;
15 revising a definition; requiring certain
16 insurers to provide medically necessary
17 remedial treatment, care, and attendance under
18 certain circumstances; requiring insurers'
19 workers' compensation managed care arrangements
20 to grant or deny requests for medical care
21 within a time certain; requiring insurers'
22 workers' compensation managed care arrangements
23 to notify injured workers of the outcome of
24 grievances within a time certain; providing a
25 presumption of resolution of a grievance absent
26 timely notice; amending s. 440.185, F.S.;
27 authorizing the division to contract with a
28 private entity for collection of certain policy
29 information; providing application; amending s.
30 440.192, F.S.; revising requirements and
31 procedures for filing petitions for benefits;

1 permitting judges to dismiss portions of a
2 petition; specifying that dismissal of
3 petitions is without prejudice; amending s.
4 440.20, F.S.; providing for payment of
5 compensation by direct deposit under certain
6 circumstances; authorizing not holding a
7 hearing under certain circumstances; revising
8 the period for payment; revising lump-sum
9 settlement requirements; amending s. 440.22,
10 F.S.; excluding child support and alimony
11 claims from general exemption of workers'
12 compensation benefits from claims of creditors;
13 amending s. 440.271, F.S.; requiring the First
14 District Court of Appeal to establish a
15 specialized division to hear workers'
16 compensation cases; amending s. 440.38, F.S.;
17 providing for the type of qualifying security
18 deposit necessary to become a self-insured
19 employer; providing requirements, procedures,
20 and criteria; correcting cross references;
21 amending s. 440.45, F.S.; requiring the
22 judicial nominating commission to consider
23 whether judges of compensation claims have met
24 certain requirements; providing procedures;
25 authorizing the Governor to appoint certain
26 judges of compensation claims; requiring the
27 Office of Judges of Compensation Claims to
28 adopt certain additional rules; requiring the
29 Office of the Judges of Compensation Claims to
30 submit draft rules to the Governor and the
31 Legislature by November 1, 2000; requiring

1 review by the Legislature; providing
2 requirements and procedures; amending ss.
3 489.114 and 489.510, F.S.; providing an
4 exception to certain workers' compensation
5 coverage evidence requirements; amending ss.
6 489.115 and 489.515, F.S.; revising
7 certification and registration requirements for
8 initial licensure; amending s. 627.311, F.S.;
9 providing for use of policyholder surplus for
10 purposes of funding certain deficits; amending
11 s. 627.914, F.S.; revising the requirements for
12 reports of information by workers' compensation
13 insurers; deleting a reporting requirement for
14 the Division of Workers' Compensation;
15 providing an appropriation; repealing s.
16 440.45(3), F.S., relating to judges of
17 compensation claims serving as docketing
18 judges; providing effective dates.

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

21
22 Section 1. Subsection (4) and paragraph (c) of
23 subsection (16) of section 440.02, Florida Statutes, are
24 amended to read:

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

28 (4) "Casual" as used in this section shall be taken to
29 refer only to employments when the work contemplated is to be
30 completed in not exceeding 10 working days, without regard to

31

1 the number of persons employed, and when the total labor cost
2 of such work is less than ~~\$1,000~~\$100.

3 (16)

4 (c) "Employment" does not include service performed by
5 or as:

6 1. Domestic servants in private homes.

7 2. Agricultural labor performed on a farm in the
8 employ of a bona fide farmer, or association of farmers, who
9 employs 5 or fewer regular employees and who employs fewer
10 than 12 other employees at one time for seasonal agricultural
11 labor that is completed in less than 30 days, provided such
12 seasonal employment does not exceed 45 days in the same
13 calendar year. The term "farm" includes stock, dairy, poultry,
14 fruit, fur-bearing animals, fish, and truck farms, ranches,
15 nurseries, and orchards. The term "agricultural labor"
16 includes field foremen, timekeepers, checkers, and other farm
17 labor supervisory personnel.

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

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

24 5. State prisoners or county inmates except those
25 performing services for private employers or those enumerated
26 in s. 948.03(8)(a).

27 Section 2. Subsection (2) of section 440.09, Florida
28 Statutes, is amended to read:

29 440.09 Coverage.--

30 (2) Benefits are not payable in respect of the
31 disability or death of any employee covered by the Federal

1 Employer's Liability Act, the Longshoremen's and Harbor
2 Worker's Compensation Act, the Defense Base Act, or the Jones
3 Act.

4 Section 3. Subsection (1) of section 440.12, Florida
5 Statutes, is amended to read:

6 440.12 Time for commencement and limits on weekly rate
7 of compensation.--

8 (1) No compensation shall be allowed for the first 7
9 days of the disability, except benefits provided for in s.
10 440.13. However, if the injury results in disability of more
11 than 21 days, compensation shall be allowed from the
12 commencement of the disability. All weekly compensation
13 payments, except for the first payment, shall be paid by check
14 or, if authorized by the employee, deposited directly into the
15 employee's bank account or a bank account established by the
16 carrier for the employee.

17 Section 4. Paragraphs (b) and (c) of subsection (4) of
18 section 440.13, Florida Statutes, are amended to read:

19 440.13 Medical services and supplies; penalty for
20 violations; limitations.--

21 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
22 DIVISION.--

23 (b) Upon the request of the Division of Workers'
24 Compensation, each medical report or bill obtained or received
25 by the employer, the carrier, or the injured employee, or the
26 attorney for the employer, carrier, or injured employee, with
27 respect to the remedial treatment, or care, and attendance of
28 the injured employee, including any report of an examination,
29 diagnosis, or disability evaluation, must be filed with the
30 Division of Workers' Compensation pursuant to rules adopted by
31 the division. The health care provider shall also furnish to

1 the injured employee or to his or her attorney, on demand, a
2 copy of his or her office chart, records, and reports, and may
3 charge the injured employee an amount authorized by the
4 division for the copies. Each such health care provider shall
5 provide to the division ~~any additional~~ information about the
6 remedial treatment, care, and attendance that the division
7 reasonably requests.

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

28 Section 5. Paragraph (d) of subsection (1), paragraph
29 (b) of subsection (2), and paragraphs (c) and (d) of
30 subsection (15) of section 440.134, Florida Statutes, are
31 amended to read:

1 440.134 Workers' compensation managed care
2 arrangement.--

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

4 (d) "Grievance" means a written complaint filed by an
5 injured worker expressing dissatisfaction with the insurer's
6 workers' compensation managed care arrangement's refusal to
7 provide medical care provided by an insurer's workers'
8 compensation managed care arrangement health care providers,
9 expressed in writing by an injured worker.

10 (2)

11 (b) Effective January 1, 1997, the employer shall,
12 subject to the limitations specified elsewhere in this
13 chapter, furnish to the employee solely through managed care
14 arrangements such medically necessary remedial treatment,
15 care, and attendance for such period as the nature of the
16 injury or the process of recovery requires pursuant to s.
17 440.13(2)(a) and (b). An employer that has secured coverage
18 under s. 440.38(1)(b) as an individual self-insurer or under
19 s. 440.38(6) shall furnish such medically necessary remedial
20 treatment, care, and attendance for such a period as the
21 nature of the injury or the process of recovery requires,
22 pursuant to s. 440.13(2)(a) and (b), through managed care
23 arrangements or without managed care arrangements. An
24 employer that has secured coverage under s. 440.38(1)(b) as an
25 individual self-insurer or under s. 440.38(6) is exempt from
26 the application and approval requirements of s. 440.134(2)(a)
27 and the filing requirements of subsections (5) and (12), and
28 paragraph (15)(g).

29 (15)

30 (c) At the time the workers' compensation managed care
31 arrangement is implemented, the insurer must provide detailed

1 information to workers and health care providers describing
2 how a grievance may be registered with the insurer. Within 30
3 days after the date a request for medical care is received by
4 the insurer's workers' compensation managed care arrangement,
5 the insurer shall grant or deny the request. If the insurer
6 denies the request, the insurer shall notify the injured
7 worker in writing of his or her right to file a grievance.

8 (d) Grievances must be considered in a timely manner
9 and must be transmitted to appropriate decisionmakers who have
10 the authority to fully investigate the issue and take
11 corrective action. If the insurer does not notify the injured
12 worker of the outcome of the grievance in writing within 30
13 days, the grievance shall be presumed to be resolved against
14 the injured worker and the grievance procedures shall be
15 presumed to be exhausted for purposes of s. 440.192(3).

16 Section 6. Subsection (7) of section 440.185, Florida
17 Statutes, is amended to read:

18 440.185 Notice of injury or death; reports; penalties
19 for violations.--

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. The division may contract with a private entity
28 for the collection of policy information required to be filed
29 by carriers pursuant to this subsection and the receipt of
30 notices of cancellation or expiration of a policy required to
31 be filed by carriers pursuant to s. 440.42(2). The submission

1 of policy information or notices of cancellation or expiration
2 to the contracted private entity satisfies the filing
3 requirements of this subsection and s. 440.42(2).

4 Section 7. Subsections (1), (2), and (5) of section
5 440.192, Florida Statutes, are amended to read:

6 440.192 Procedure for resolving benefit disputes.--

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

22 (2) Upon receipt, the judge ~~The Office of the Judges~~
23 of compensation claims shall review each petition and shall
24 dismiss each petition or any portion of such petition, upon
25 the judge's ~~its~~ own motion or upon the motion of any party,
26 that does not on its face specifically identify or itemize the
27 following:

28 (a) Name, address, telephone number, and social
29 security number of the employee.

30 (b) Name, address, and telephone number of the
31 employer.

1 (c) A detailed description of the injury and cause of
2 the injury, including the location of the occurrence.

3 (d) A detailed description of the employee's job, work
4 responsibilities, and work the employee was performing when
5 the injury occurred.

6 (e) The time period for which compensation was not
7 timely provided.

8 (f) Date of maximum medical improvement, character of
9 disability, and specific statement of all benefits or
10 compensation that the employee is seeking.

11 (g) All travel costs to which the employee believes
12 she or he is entitled, including dates of travel and purpose
13 of travel, means of transportation, and mileage.

14 (h) Specific listing of all medical charges alleged
15 unpaid, including the name and address of the medical
16 provider, the amounts due, and the specific dates of
17 treatment.

18 (i) The type or nature of treatment care or attendance
19 sought and the justification for such treatment.

20 (j) Specific explanation of any other disputed issue
21 that a judge of compensation claims will be called to rule
22 upon.

23

24 The dismissal of any petition or any portion of such petition
25 under this section shall be without prejudice and shall not
26 require a hearing.

27 (5) All motions to dismiss must state with
28 particularity the basis for the motion. The judge of
29 compensation claims shall enter an order upon such motions
30 without hearing, unless good cause for hearing is shown. When
31 any petition or portion of such petition is dismissed for lack

1 of specificity under this subsection, the claimant must be
2 allowed 20 days after the date of the order of dismissal in
3 which to file an amended petition. Any grounds for dismissal
4 for lack of specificity under this section not asserted within
5 30 days after receipt of the petition for benefits are thereby
6 waived.

7 Section 8. Paragraph (a) of subsection (1), subsection
8 (6), and paragraph (a) of subsection (11) of section 440.20,
9 Florida Statutes, are amended to read:

10 440.20 Time for payment of compensation; penalties for
11 late payment.--

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

24 (6) If any installment of compensation for death or
25 dependency benefits, disability, permanent impairment, or wage
26 loss payable without an award is not paid within 7 days after
27 it becomes due, as provided in subsection (2), subsection (3),
28 or subsection (4), there shall be added to such unpaid
29 installment a punitive penalty of an amount equal to 20
30 percent of the unpaid installment or \$5, which shall be paid
31 at the same time as, but in addition to, such installment of

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

28 (11)(a) Upon joint petition of all interested parties,
29 a lump-sum payment in exchange for the employer's or carrier's
30 release from liability for future medical expenses, as well as
31 future payments of compensation expenses and any other

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

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

3 Section 9. Section 440.22, Florida Statutes, is
4 amended to read:

5 440.22 Assignment and exemption from claims of
6 creditors.--No assignment, release, or commutation of
7 compensation or benefits due or payable under this chapter
8 except as provided by this chapter shall be valid, and such
9 compensation and benefits shall be exempt from all claims of
10 creditors, and from levy, execution and attachments or other
11 remedy for recovery or collection of a debt, which exemption
12 may not be waived. However, the exemption of workers'
13 compensation claims from creditors does not extend to claims
14 based on an award of child support or alimony.

15 Section 10. Section 440.271, Florida Statutes, is
16 amended to read:

17 440.271 Appeal of order of judge of compensation
18 claims.--Review of any order of a judge of compensation claims
19 entered pursuant to this chapter shall be by appeal to the
20 District Court of Appeal, First District. To promote
21 consistency and uniformity in the application of this chapter,
22 the District Court of Appeal, First District, shall establish
23 a specialized division to hear all appeals of orders of judges
24 of compensation claims. The court may structure the division
25 to hear workers' compensation cases exclusively or in addition
26 to other appeals. Appeals shall be filed in accordance with
27 rules of procedure prescribed by the Supreme Court for review
28 of such orders. The division shall be given notice of any
29 proceedings pertaining to s. 440.25, regarding indigency, or
30 s. 440.49, regarding the Special Disability Trust Fund, and
31 shall have the right to intervene in any proceedings.

1 Section 11. Subsection (1) of section 440.38, Florida
2 Statutes, is amended to read:

3 440.38 Security for compensation; insurance carriers
4 and self-insurers.--

5 (1) Every employer shall secure the payment of
6 compensation under this chapter:

7 (a) By insuring and keeping insured the payment of
8 such compensation with any stock company or mutual company or
9 association or exchange, authorized to do business in the
10 state;

11 (b) By furnishing satisfactory proof to the division
12 of her or his financial ability to pay such compensation and
13 receiving an authorization from the division to pay such
14 compensation directly in accordance with the following
15 provisions:

16 1. The division may, ~~as a condition to such~~
17 ~~authorization, require an such~~ employer to deposit with in a
18 ~~depository designated by the division a qualifying security~~
19 deposit. The division shall determine the type and amount of
20 the qualifying security deposit and shall either an indemnity
21 ~~bond or securities, at the option of the employer, of a kind~~
22 ~~and in an amount determined by the division and subject to~~
23 ~~such conditions as the division may prescribe~~ conditions for
24 the qualifying security deposit, which shall include
25 authorization for to the division to call the qualifying
26 security deposit in the case of default ~~to sell any such~~
27 ~~securities sufficient to pay compensation awards or to bring~~
28 ~~suit upon such bonds, to procure prompt payment of~~
29 ~~compensation under this chapter. In addition, the division~~
30 shall require, as a condition to authorization to self-insure,
31 proof that the employer has provided for competent personnel

1 with whom to deliver benefits and to provide a safe working
2 environment. Further, the division shall require such
3 employer to carry reinsurance at levels that will ensure the
4 actuarial soundness of such employer in accordance with rules
5 promulgated by the division. The division may by rule require
6 that, in the event of an individual self-insurer's insolvency,
7 such qualifying security deposits ~~indemnity bonds, securities,~~
8 and reinsurance policies are ~~shall be~~ payable to the Florida
9 Self-Insurers Guaranty Association, Incorporated, created
10 pursuant to s. 440.385. Any employer securing compensation in
11 accordance with the provisions of this paragraph shall be
12 known as a self-insurer and shall be classed as a carrier of
13 her or his own insurance.

14 2. If the employer fails to maintain the foregoing
15 requirements, the division shall revoke the employer's
16 authority to self-insure, unless the employer provides to the
17 division the certified opinion of an independent actuary who
18 is a member of the American Society of Actuaries as to the
19 actuarial present value of the employer's determined and
20 estimated future compensation payments based on cash reserves,
21 using a 4-percent discount rate, and a qualifying security
22 deposit equal to 1.5 times the value so certified. The
23 employer shall thereafter annually provide such a certified
24 opinion until such time as the employer meets the requirements
25 of subparagraph 1. The qualifying security deposit shall be
26 adjusted at the time of each such annual report. Upon the
27 failure of the employer to timely provide such opinion or to
28 timely provide a security deposit in an amount equal to 1.5
29 times the value certified in the latest opinion, the division
30 shall then revoke such employer's authorization to
31 self-insure, and such failure shall be deemed to constitute an

1 immediate serious danger to the public health, safety, or
2 welfare sufficient to justify the summary suspension of the
3 employer's authorization to self-insure pursuant to s. 120.68.
4 3. Upon the suspension or revocation of the employer's
5 authorization to self-insure, the employer shall provide to
6 the division and to the Florida Self-Insurers Guaranty
7 Association, Incorporated, created pursuant to s. 440.385 the
8 certified opinion of an independent actuary who is a member of
9 the American Society of Actuaries of the actuarial present
10 value of the determined and estimated future compensation
11 payments of the employer for claims incurred while the member
12 exercised the privilege of self-insurance, using a discount
13 rate of 4 percent. The employer shall provide such an opinion
14 at 6-month intervals thereafter until such time as the latest
15 opinion shows no remaining value of claims. With each such
16 opinion, the employer shall deposit with the division a
17 qualifying security deposit in an amount equal to the value
18 certified by the actuary. The association has a cause of
19 action against an employer, and against any successor of the
20 employer, who fails to timely provide such opinion or who
21 fails to timely maintain the required security deposit with
22 the division. The association shall recover a judgment in the
23 amount of the actuarial present value of the determined and
24 estimated future compensation payments of the employer for
25 claims incurred while the employer exercised the privilege of
26 self-insurance, together with attorney's fees. For purposes
27 of this section, the successor of an employer means any
28 person, business entity, or group of persons or business
29 entities, which holds or acquires legal or beneficial title to
30 the majority of the assets or the majority of the shares of
31 the employer.

1 4. A qualifying security deposit shall consist, at the
2 option of the employer, of:

3 a. Surety bonds, in a form and containing such terms
4 as prescribed by the division, issued by a corporation surety
5 authorized to transact surety business by the Department of
6 Insurance, and whose policyholders' and financial ratings, as
7 reported in A.M. Best's Insurance Reports, Property-Liability,
8 are not less than "A" and "V", respectively.

9 ~~b. Certificates of deposit with financial~~
10 ~~institutions, the deposits of which are insured through the~~
11 ~~Federal Deposit Insurance Corporation or the Federal Savings~~
12 ~~and Loan Insurance Corporation.~~

13 ~~b.e.~~ Irrevocable letters of credit in favor of the
14 division issued by financial institutions located within this
15 state, the deposits of which are insured through the Federal
16 Deposit Insurance Corporation ~~described in sub-subparagraph b.~~

17 ~~d. Direct obligations of the United States Treasury~~
18 ~~backed by the full faith and credit of the United States.~~

19 ~~e. Securities issued by this state and backed by the~~
20 ~~full faith and credit of this state.~~

21 5. The qualifying security deposit shall be held by
22 the division, ~~or by a depository authorized by the division,~~
23 exclusively for the benefit of workers' compensation
24 claimants. The security shall not be subject to assignment,
25 execution, attachment, or any legal process whatsoever, except
26 as necessary to guarantee the payment of compensation under
27 this chapter. No surety bond may be terminated, and no letter
28 of credit ~~other qualifying security~~ may be allowed to expire
29 ~~lapse~~, without 90 days' prior notice to the division and
30 deposit by the self-insuring employer of some other qualifying
31 security deposit of equal value within 10 business days after

1 such notice. Failure to provide such notice or failure to
2 timely provide qualifying replacement security after such
3 notice shall constitute grounds for the division to call or
4 sue upon the surety bond, or to ~~act with respect to other~~
5 ~~pledged security in any manner necessary to preserve its value~~
6 ~~for the purposes intended by this section, including the~~
7 ~~exercise its of rights under a letter of credit. Current~~
8 ~~self-insured employers must comply with this section on or~~
9 ~~before December 31, 2000, or upon maturity of existing~~
10 ~~security deposits, whichever occurs later, the sale of any~~
11 ~~security at then prevailing market rates, or the withdrawal of~~
12 ~~any funds represented by any certificate of deposit forming~~
13 ~~part of the qualifying security deposit;~~

14 (c) By entering into a contract with a public utility
15 under an approved utility-provided self-insurance program as
16 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
17 1983. The division shall adopt rules to implement this
18 paragraph;

19 (d) By entering into an interlocal agreement with
20 other local governmental entities to create a local government
21 pool pursuant to s. 624.4622 ~~440.575~~;

22 (e) In accordance with s. 440.135, an employer, other
23 than a local government unit, may elect coverage under the
24 Workers' Compensation Law and retain the benefit of the
25 exclusiveness of liability provided in s. 440.11 by obtaining
26 a 24-hour health insurance policy from an authorized property
27 and casualty insurance carrier or an authorized life and
28 health insurance carrier, or by participating in a fully or
29 partially self-insured 24-hour health plan that is established
30 or maintained by or for two or more employers, so long as the
31 law of this state is not preempted by the Employee Retirement

1 | Income Security Act of 1974, Pub. L. No. 93-406, or any
2 | amendment to that law, which policy or plan must provide, for
3 | at least occupational injuries and illnesses, medical benefits
4 | that are comparable to those required by this chapter. A local
5 | government unit, as a single employer, in accordance with s.
6 | 440.135, may participate in the 24-hour health insurance
7 | coverage plan referenced in this paragraph. Disputes and
8 | remedies arising under policies issued under this section are
9 | governed by the terms and conditions of the policies and under
10 | the applicable provisions of the Florida Insurance Code and
11 | rules adopted under the insurance code and other applicable
12 | laws of this state. The 24-hour health insurance policy may
13 | provide for health care by a health maintenance organization
14 | or a preferred provider organization. The premium for such
15 | 24-hour health insurance policy shall be paid entirely by the
16 | employer. The 24-hour health insurance policy may use
17 | deductibles and coinsurance provisions that require the
18 | employee to pay a portion of the actual medical care received
19 | by the employee. If an employer obtains a 24-hour health
20 | insurance policy or self-insured plan to secure payment of
21 | compensation as to medical benefits, the employer must also
22 | obtain an insurance policy or policies that provide indemnity
23 | benefits as follows:

24 | 1. If indemnity benefits are provided only for
25 | occupational-related disability, such benefits must be
26 | comparable to those required by this chapter.

27 | 2. If indemnity benefits are provided for both
28 | occupational-related and nonoccupational-related disability,
29 | such benefits must be comparable to those required by this
30 | chapter, except that they must be based on 60 percent of the
31 | average weekly wages.

1 3. The employer shall provide for each of its
2 employees life insurance with a death benefit of \$100,000.

3 4. Policies providing coverage under this subsection
4 must use prescribed and acceptable underwriting standards,
5 forms, and policies approved by the Department of Insurance.
6 If any insurance policy that provides coverage under this
7 section is canceled, terminated, or nonrenewed for any reason,
8 the cancellation, termination, or nonrenewal is ineffective
9 until the self-insured employer or insurance carrier or
10 carriers notify the division and the Department of Insurance
11 of the cancellation, termination, or nonrenewal, and until the
12 division has actually received the notification. The division
13 must be notified of replacement coverage under a workers'
14 compensation and employer's liability insurance policy or plan
15 by the employer prior to the effective date of the
16 cancellation, termination, or nonrenewal; or

17 (f) By entering into a contract with an individual
18 self-insurer under an approved individual
19 self-insurer-provided self-insurance program as set forth in
20 s. 624.46225 ~~440.571~~. The division may adopt rules to
21 implement this subsection.

22 Section 12. Subsections (2) and (5) of section 440.45,
23 Florida Statutes, are amended to read:

24 440.45 Office of the Judges of Compensation Claims.--

25 (2)(a) The Governor shall appoint full-time judges of
26 compensation claims to conduct proceedings as required by this
27 chapter or other law. No person may be nominated to serve as a
28 judge of compensation claims unless he or she has been a
29 member of The Florida Bar in good standing and is
30 knowledgeable in the practice of law of workers' compensation.

31

1 No judge of compensation claims shall engage in the private
2 practice of law during a term of office.

3 (b) Except as provided in paragraph (c), the Governor
4 shall appoint a judge of compensation claims from a list of
5 three persons nominated by a statewide nominating commission.
6 The statewide nominating commission shall be composed of the
7 following:

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

22 2. Five 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 each of the territorial jurisdictions of
25 the district courts of appeal, appointed by the Governor. On
26 July 1, 1999, the term of office of each person appointed by
27 the Governor to the commission expires. The Governor shall
28 appoint members who reside in the odd-numbered district court
29 of appeal jurisdictions to 2-year terms each, beginning July
30 1, 1999, and members who reside in the even-numbered district
31 court of appeal jurisdictions to 4-year terms each, beginning

1 July 1, 1999. Thereafter, each member shall be appointed for a
2 4-year term; and

3 3. Five electors, at least one of whom must be a
4 member of a minority group as defined in s. 288.703(3), one of
5 each who resides in the territorial jurisdictions of the
6 district courts of appeal, selected and appointed by a
7 majority vote of the other 10 members of the commission. On
8 October 1, 1999, the term of office of each person appointed
9 to the commission by its other members expires. A majority of
10 the other members of the commission shall appoint members who
11 reside in the odd-numbered district court of appeal
12 jurisdictions to 2-year terms each, beginning October 1, 1999,
13 and members who reside in the even-numbered district court of
14 appeal jurisdictions to 4-year terms each, beginning October
15 1, 1999. Thereafter, each member shall be appointed for a
16 4-year term.

17
18 A vacancy occurring on the commission shall be filled by the
19 original appointing authority for the unexpired balance of the
20 term. No attorney who appears before any judge of compensation
21 claims more than four times a year is eligible to serve on the
22 statewide nominating commission. The meetings and
23 determinations of the nominating commission as to the judges
24 of compensation claims shall be open to the public.

25 (c) Each judge of compensation claims shall be
26 appointed for a term of 4 years, but during the term of office
27 may be removed by the Governor for cause. Prior to the
28 expiration of a judge's term of office, the statewide
29 nominating commission shall review the judge's conduct and
30 determine whether the judge's performance is satisfactory. In
31 determining whether a judge's performance is satisfactory, the

1 commission shall consider the extent to which the judge has
2 met the requirements of this chapter, including, but not
3 limited to, the requirements of ss. 440.192(2), 440.25(1),
4 440.25(4)(a)-(f), 440.34(2), and 440.442. If the commission
5 finds that judges generally are unable to meet a particular
6 statutory requirement for reasons beyond their control, the
7 commission shall request the Legislature to review that
8 particular requirement. If the judge's performance is deemed
9 satisfactory, the commission shall report its finding to the
10 Governor no later than 6 months prior to the expiration of the
11 judge's term of office. The Governor shall review the
12 commission's report and may reappoint the judge for an
13 additional 4-year term. If the Governor does not reappoint the
14 judge, the Governor shall inform the commission. The judge
15 shall remain in office until the Governor has appointed a
16 successor judge in accordance with paragraphs (a) and (b). If
17 a vacancy occurs during a judge's unexpired term, the
18 statewide nominating commission does not find the judge's
19 performance is satisfactory, or the Governor does not
20 reappoint the judge, the Governor shall appoint a successor
21 judge for a term of 4 years in accordance with paragraph (b).
22 (d) The Governor may appoint any attorney with 3 years
23 of experience in the practice of law in this state to serve as
24 a judge of compensation claims pro hac vice in the absence or
25 disqualification of any full-time judge of compensation claims
26 or to serve temporarily as an additional judge of compensation
27 claims in any area of the state in which the Governor
28 determines that a need exists for such additional judge.
29 However, no attorney so appointed by the Governor shall serve
30 for a period to exceed 60 successive days.

31

1 (5) The Office of the Judges of Compensation Claims
2 shall promulgate rules to effect the purposes of this section.
3 Such rules shall include procedural rules applicable to
4 workers' compensation claim resolution and uniform criteria
5 for measuring the performance of the office, including, but
6 not limited to, the number of cases assigned and disposed, the
7 age of pending and disposed cases, timeliness of
8 decisionmaking, extraordinary fee awards, and the data
9 necessary for the judicial nominating commission to review the
10 performance of judges as required in paragraph (2)(c) and
11 other performance indicators. On or before November 1, 2000,
12 the Office of the Judges of Compensation Claims shall submit a
13 draft of these rules to the Governor, the Speaker of the House
14 of Representatives, and the President of the Senate. The
15 Legislature shall review the draft rules and may approve,
16 modify and approve, disapprove, or take no action on the
17 rules. If the Legislature approves the draft rules, or
18 modifies and approves the draft rules, the draft rules shall
19 take effect. If the Legislature takes no action on the draft
20 rules, the Office of the Judges of Compensation Claims shall
21 adopt the draft rules pursuant to chapter 120. If the
22 Legislature disapproves the draft rules, the Legislature shall
23 convey the reasons for disapproval to the Office of the Judges
24 of Compensation Claims for use in redrafting the rules. The
25 workers' compensation rules of procedure approved by the
26 Supreme Court shall apply until the rules promulgated by the
27 Office of the Judges of Compensation Claims pursuant to this
28 section become effective.

29 Section 13. Section 489.114, Florida Statutes, is
30 amended to read:
31

1 489.114 Evidence of workers' compensation
2 coverage.--Except as provided in s. 489.115(5)(d),any person,
3 business organization, or qualifying agent engaged in the
4 business of contracting in this state and certified or
5 registered under this part shall, as a condition precedent to
6 the issuance or renewal of a certificate, registration, or
7 certificate of authority of the contractor, provide to the
8 Construction Industry Licensing Board, as provided by board
9 rule, evidence of workers' compensation coverage pursuant to
10 chapter 440. In the event that the Division of Workers'
11 Compensation of the Department of Labor and Employment
12 Security receives notice of the cancellation of a policy of
13 workers' compensation insurance insuring a person or entity
14 governed by this section, the Division of Workers'
15 Compensation shall certify and identify all persons or
16 entities by certification or registration license number to
17 the department after verification is made by the Division of
18 Workers' Compensation that such cancellation has occurred or
19 that persons or entities governed by this section are no
20 longer covered by workers' compensation insurance. Such
21 certification and verification by the Division of Workers'
22 Compensation shall result solely from records furnished to the
23 Division of Workers' Compensation by the persons or entities
24 governed by this section. The department shall notify the
25 persons or entities governed by this section who have been
26 determined to be in noncompliance with chapter 440, and the
27 persons or entities notified shall provide certification of
28 compliance with chapter 440 to the department and pay an
29 administrative fine as provided by rule. The failure to
30 maintain workers' compensation coverage as required by law
31 shall be grounds for the board to revoke, suspend, or deny the

1 issuance or renewal of a certificate, registration, or
2 certificate of authority of the contractor under the
3 provisions of s. 489.129.

4 Section 14. Paragraph (d) is added to subsection (5)
5 of section 489.115, Florida Statutes, to read:

6 489.115 Certification and registration; endorsement;
7 reciprocity; renewals; continuing education.--

8 (5)

9 (d) If qualifying for an exemption from workers'
10 compensation coverage requirements under s. 440.05, an
11 applicant for initial issuance of a certificate or
12 registration shall submit as a prerequisite an affidavit
13 attesting to the fact that the applicant will obtain an
14 exemption within 10 days after the date the initial
15 certificate or registration is issued by the board.

16 Section 15. Section 489.510, Florida Statutes, is
17 amended to read:

18 489.510 Evidence of workers' compensation
19 coverage.--Except as provided in s. 489.515(3)(b),any person,
20 business organization, or qualifying agent engaged in the
21 business of contracting in this state and certified or
22 registered under this part shall, as a condition precedent to
23 the issuance or renewal of a certificate or registration of
24 the contractor, provide to the Electrical Contractors'
25 Licensing Board, as provided by board rule, evidence of
26 workers' compensation coverage pursuant to chapter 440. In
27 the event that the Division of Workers' Compensation of the
28 Department of Labor and Employment Security receives notice of
29 the cancellation of a policy of workers' compensation
30 insurance insuring a person or entity governed by this
31 section, the Division of Workers' Compensation shall certify

1 and identify all persons or entities by certification or
2 registration license number to the department after
3 verification is made by the Division of Workers' Compensation
4 that such cancellation has occurred or that persons or
5 entities governed by this section are no longer covered by
6 workers' compensation insurance. Such certification and
7 verification by the Division of Workers' Compensation shall
8 result solely from records furnished to the Division of
9 Workers' Compensation by the persons or entities governed by
10 this section. The department shall notify the persons or
11 entities governed by this section who have been determined to
12 be in noncompliance with chapter 440, and the persons or
13 entities notified shall provide certification of compliance
14 with chapter 440 to the department and pay an administrative
15 fine as provided by rule. The failure to maintain workers'
16 compensation coverage as required by law shall be grounds for
17 the board to revoke, suspend, or deny the issuance or renewal
18 of a certificate or registration of the contractor under the
19 provisions of s. 489.533.

20 Section 16. Subsection (3) of section 489.515, Florida
21 Statutes, is amended to read:

22 489.515 Issuance of certificates; registrations.--

23 (3)(a) As a prerequisite to the initial issuance or
24 the renewal of a certificate or registration, the applicant
25 shall submit an affidavit on a form provided by the board
26 attesting to the fact that the applicant has obtained both
27 workers' compensation insurance or an acceptable exemption
28 certificate issued by the department and public liability and
29 property damage insurance for the health, safety, and welfare
30 of the public in amounts determined by rule of the board. The
31

1 board shall by rule establish a procedure to verify the
2 accuracy of such affidavits based upon a random audit method.

3 (b) If qualifying for an exemption from workers'
4 compensation coverage requirements under s. 440.05, an
5 applicant for initial issuance of a certificate or
6 registration shall submit as a prerequisite an affidavit
7 attesting to the fact that the applicant will obtain an
8 exemption within 10 days after the date the initial
9 certificate or registration is issued by the board.

10 Section 17. Paragraphs (g) and (p) of subsection (4)
11 of section 627.311, Florida Statutes, are amended to read:

12 627.311 Joint underwriters and joint reinsurers.--
13 (4)

14 (g) Whenever a deficit exists, the plan shall, within
15 90 days, provide the department with a program to eliminate
16 the deficit within a reasonable time. The deficit may be
17 funded both through increased premiums charged to insureds of
18 the plan for subsequent years, through the use of policyholder
19 surplus attributable to any year, and through assessments on
20 insureds in the plan if the plan uses assessable policies.

21 (p) Neither the plan nor any member of the board of
22 governors is liable for monetary damages to any person for any
23 statement, vote, decision, or failure to act, regarding the
24 management or policies of the plan, unless:

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

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

29 a. A violation of the criminal law, unless the member
30 had reasonable cause to believe her or his conduct was not
31 unlawful. A judgment or other final adjudication against a

1 member in any criminal proceeding for violation of the
2 criminal law estops that member from contesting the fact that
3 her or his breach, or failure to perform, constitutes a
4 violation of the criminal law; but does not estop the member
5 from establishing that she or he had reasonable cause to
6 believe that her or his conduct was lawful or had no
7 reasonable cause to believe that her or his conduct was
8 unlawful;

9 b. A transaction from which the member derived an
10 improper personal benefit, either directly or indirectly; or

11 c. Recklessness or any act or omission that was
12 committed in bad faith or with malicious purpose or in a
13 manner exhibiting wanton and willful disregard of human
14 rights, safety, or property. For purposes of this
15 sub-subparagraph, the term "recklessness" means the acting, or
16 omission to act, in conscious disregard of a risk:

17 (I) Known, or so obvious that it should have been
18 known, to the member; and

19 (II) Known to the member, or so obvious that it should
20 have been known, to be so great as to make it highly probable
21 that harm would follow from such act or omission.

22 Section 18. Effective July 1, 2000, section 627.914,
23 Florida Statutes, is amended to read:

24 627.914 Reports of information by workers'
25 compensation insurers required.--

26 (1) The department shall promulgate rules and
27 statistical plans which shall thereafter be used by each
28 insurer and self-insurance fund as defined in s. 624.461 in
29 the recording and reporting of loss, expense, and claims
30 experience, in order that the experience of all insurers and
31 self-insurance funds ~~self-insurers~~ may be made available at

1 least annually in such form and detail as may be necessary to
2 aid the department in determining whether Florida experience
3 for workers' compensation insurance is sufficient for
4 establishing rates.

5 ~~(2) Any insurer authorized to write a policy of~~
6 ~~workers' compensation insurance shall transmit the following~~
7 ~~information to the department each year with its annual~~
8 ~~report, and such information shall be reported on a net basis~~
9 ~~with respect to reinsurance for nationwide experience and on a~~
10 ~~direct basis for Florida experience;~~

11 ~~(a) Premiums written;~~

12 ~~(b) Premiums earned;~~

13 ~~(c) Dividends paid or credited to policyholders;~~

14 ~~(d) Losses paid;~~

15 ~~(e) Allocated loss adjustment expenses;~~

16 ~~(f) The ratio of allocated loss adjustment expenses to~~
17 ~~losses paid;~~

18 ~~(g) Unallocated loss adjustment expenses;~~

19 ~~(h) The ratio of unallocated loss adjustment expenses~~
20 ~~to losses paid;~~

21 ~~(i) The total of losses paid and unallocated and~~
22 ~~allocated loss adjustment expenses;~~

23 ~~(j) The ratio of losses paid and unallocated and~~
24 ~~allocated loss adjustment expenses to premiums earned;~~

25 ~~(k) The number of claims outstanding as of December 31~~
26 ~~of each year;~~

27 ~~(l) The total amount of losses unpaid as of December~~
28 ~~31 of each year;~~

29 ~~(m) The total amount of allocated and unallocated loss~~
30 ~~adjustment expenses unpaid as of December 31 of each year; and~~

31

1 ~~(n) The total of losses paid and allocated loss~~
2 ~~adjustment expenses and unallocated loss adjustment expenses,~~
3 ~~plus the total of losses unpaid as of December 31 of each year~~
4 ~~and loss adjustment expenses unpaid as of December 31 of each~~
5 ~~year.~~

6 ~~(3) A report of the information required in subsection~~
7 ~~(2) shall be filed no later than April 1 of each year and~~
8 ~~shall include the information for the preceding year ending~~
9 ~~December 31. All reports shall be on a calendar-accident year~~
10 ~~basis, and each calendar-accident year shall be reported at~~
11 ~~eight stages of development.~~

12 ~~(2)(4)~~ Each insurer and self-insurance fund authorized
13 to write a policy of workers' compensation insurance shall
14 transmit the information for paragraphs (a), (b), (c), (d),
15 and (e) annually on both Florida experience and nationwide
16 experience separately:

- 17 (a) Payrolls by classification.
18 (b) Manual premiums by classification.
19 (c) Standard premiums by classification.
20 (d) Losses by classification and injury type.
21 (e) Expenses.

22
23 A report of this information shall be filed no later than July
24 ~~April~~ 1 of each year. All reports shall be filed in
25 accordance with standard reporting procedures for insurers,
26 which procedures have received approval by the department, and
27 shall contain data for the most recent policy period
28 available. A statistical or rating organization may be used
29 by insurers and self-insurance funds to report the data
30 required by this section. The statistical or rating
31 organization shall report each data element in the aggregate

1 only for insurers and self-insurance funds required to report
2 under this section who elect to have the ~~rating~~ organization
3 report on their behalf. Such insurers and self-insurance funds
4 shall be named in the report.

5 ~~(3)(5)~~ Individual self-insurers as defined ~~authorized~~
6 ~~to transact workers' compensation insurance as provided in s.~~
7 440.02 shall report only Florida data as prescribed in
8 paragraphs (a) through (e) of subsection ~~(2)(4)~~ to the
9 Division of Workers' Compensation of the Department of Labor
10 and Employment Security.

11 (a) The Division of Workers' Compensation shall
12 publish the dates and forms necessary to enable individual
13 self-insurers to comply with this section.

14 ~~(b) The Division of Workers' Compensation shall report~~
15 ~~the information collected under this section to the Department~~
16 ~~of Insurance in a manner prescribed by the department.~~

17 ~~(b)(c)~~ A statistical or rating organization may be
18 used by individual self-insurers for the purposes of reporting
19 the data required by this section and calculating experience
20 ratings.

21 ~~(4)(6)~~ The department shall provide a summary of
22 information provided pursuant to subsection ~~subsections~~ (2)
23 ~~and (4)~~ in its annual report.

24 Section 19. There is appropriated to the Department of
25 Labor and Employment Security from the Workers' Compensation
26 Trust Fund \$1,400,000 for the purpose of hiring additional
27 mediators to carry out the functions of section 440.25(3),
28 Florida Statutes.

29 Section 20. Subsection (3) of section 440.45, Florida
30 Statutes, is repealed.

31

1 Section 21. Except as otherwise provided in this act,
2 this act shall take effect October 1, 2000.

3
4 *****

5 LEGISLATIVE SUMMARY

6 Revising various workers' compensation provisions
7 relating to definitions; electronic payment of
8 compensation payments; submission of medical reports and
9 bills; provider access to medical records; medically
10 necessary remedial treatment, care, and attendance
11 requirements; grants or denials of requests for medical
12 care; grievances; state contracts for collecting policy
13 information; filing petitions for benefits; lump-sum
14 settlement requirements; creditor's claims; a specialized
15 court division to hear workers' compensation cases;
16 qualifying security deposits for self-insured employers;
17 judicial nominating commission reviews of judges of
18 compensation claims; appointment of judges by the
19 Governor; rules of the Office of Judges of Compensation
20 Claims; certification and registration requirements for
21 initial licensure; and reports of information by workers'
22 compensation insurers. (See bill for details.)
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