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2 An act relating to workers' compensation;
3 clarifying the legislative intent that the
4 terms "net premiums written" and "net premiums
5 collected" as used in ch. 440, F.S., include
6 ceded reinsurance premiums in accord with
7 original intent; amending s. 440.49, F.S.,
8 relating to the assessment for the Special
9 Disability Trust Fund; amending s. 440.51,
10 F.S., relating to the assessment for the
11 Workers' Compensation Administration Trust Fund
12 and to expenses of administration; prescribing
13 effect of deductions with respect to
14 retaliatory taxes; reducing the assessment rate
15 for calendar year 2001; creating a Task Force
16 on Workers' Compensation Administration to
17 study the way in which the workers'
18 compensation system is funded and administered;
19 amending s. 440.50, F.S.; revising the purpose
20 of the Workers' Compensation Administration
21 Trust Fund; amending s. 440.51, F.S.; defining
22 the terms "plan" and "fixed administrative
23 expenses" for purposes of administering the
24 workers' administration program; providing for
25 transfer of funds to the workers' compensation
26 joint underwriting plan, subject to
27 appropriation; amending s. 627.311, F.S.;
28 providing for funding a deficit in the workers'
29 compensation joint underwriting plan through
30 policyholder surplus; amending s. 440.38, F.S.;

1 revising certain requirements relating to
2 self-insurers; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Legislative intent.--It is the intent of
7 the Legislature to clarify that the terms "net premiums
8 written" and "net premiums collected" as used in chapter 440,
9 Florida Statutes, have meant and continue to mean premiums
10 arising from workers' compensation policies issued by an
11 insurer in this state as the primary insurance carrier without
12 deduction for ceded reinsurance premiums transferred to an
13 insurance company for reinsurance purchased or any premium
14 expense attributable to purchasing reinsurance.

15 Section 2. Paragraph (b) of subsection (9) of section
16 440.49, Florida Statutes, is amended to read:

17 440.49 Limitation of liability for subsequent injury
18 through Special Disability Trust Fund.--

19 (9) SPECIAL DISABILITY TRUST FUND.--

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

31

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

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

8 b. Two times the disbursements of the most recent
9 calendar year.

10
11 Such amount shall be prorated among the insurance companies
12 writing compensation insurance in the state and the
13 self-insurers. Provided however, for those carriers that have
14 excluded ceded reinsurance premiums from their assessments on
15 or before January 1, 2000, no assessments on ceded reinsurance
16 premiums shall be paid by those carriers until such time as
17 the division advises each of those carriers of the impact that
18 the inclusion of ceded reinsurance premiums has on their
19 assessment. The division may not recover any past
20 underpayments of assessments levied against any carrier that
21 on or before January 1, 2000, excluded ceded reinsurance
22 premiums from their assessment prior to the point that the
23 division advises of the appropriate assessment that should
24 have been paid.

25 3. The net premiums written by the companies for
26 workers' compensation in this state and the net premium
27 written applicable to the self-insurers in this state are the
28 basis for computing the amount to be assessed as a percentage
29 of net premiums. Such payments shall be made by each carrier
30 ~~insurance company~~ and self-insurer to the division for the
31

1 Special Disability Trust Fund in accordance with such
2 regulations as the division prescribes.

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

9 Section 3. Subsections (1), (2), (3), and (5) of
10 section 440.51, Florida Statutes, are amended to read:

11 440.51 Expenses of administration.--

12 (1) The division shall estimate annually in advance
13 the amounts necessary for the administration of this chapter,
14 in the following manner.

15 (a) The division shall, by July 1 of ~~as soon as~~
16 ~~practicable after July 1~~ in each year, notify carriers and
17 self-insurers of the assessment rate, which shall be based on
18 ~~determine~~ the anticipated expenses ~~expense~~ of the
19 administration of this chapter for the next calendar ~~preceding~~
20 ~~fiscal~~ year. Such assessment rate shall take effect January 1
21 of the next calendar year and shall be included in workers'
22 compensation rate filings approved by the Department of
23 Insurance which become effective on or after January 1 of the
24 next calendar year. Assessments shall become due and be paid
25 quarterly. ~~The expense of administration for such preceding~~
26 ~~fiscal year shall be used as the basis for determining the~~
27 ~~amount to be assessed against each carrier in order to provide~~
28 ~~for the expenses of the administration of this chapter for the~~
29 ~~current fiscal year.~~

30 (b) The total expenses of administration shall be
31 prorated among the carriers ~~insurance companies~~ writing

1 compensation insurance in the state and self-insurers. The
2 net premiums collected by carriers ~~the companies~~ and the
3 amount of premiums calculated by the division for self-insured
4 employers ~~a self-insurer would have to pay if insured~~ are the
5 basis for computing the amount to be assessed. When reporting
6 deductible policy premium for purposes of computing
7 assessments levied after July 1, 2001, full policy premium
8 value must be reported prior to application of deductible
9 discounts or credits. This amount may be assessed as a
10 specific amount or as a percentage of net premiums payable as
11 the division may direct, provided such amount so assessed
12 shall not exceed 2.75 ~~4~~ percent, beginning January 1, 2001,
13 except during the interim period from July 1, 2000, through
14 December 31, 2000, such assessments shall not exceed 4 percent
15 of such net premiums. The carriers ~~insurance companies~~ may
16 elect to make the payments required under s. 440.15(1)(f) ~~s.~~
17 ~~440.15(1)(e)~~ rather than having these payments made by the
18 division. In that event, such payments will be credited to
19 the carriers ~~insurance companies~~, and the amount due by the
20 carrier ~~insurance company~~ under this section will be reduced
21 accordingly.

22 (2) The division shall provide by regulation for the
23 collection of the amounts assessed against each carrier. Such
24 amounts shall be paid within 30 days from the date that notice
25 is served upon such carrier. If such amounts are not paid
26 within such period, there may be assessed for each 30 days the
27 amount so assessed remains unpaid, a civil penalty equal to 10
28 percent of the amount so unpaid, which shall be collected at
29 the same time and a part of the amount assessed. For those
30 carriers who excluded ceded reinsurance premiums from their
31 assessments prior to January 1, 2000, the division shall not

1 recover any past underpayments of assessments related to ceded
2 reinsurance premiums prior to January 1, 2001, against such
3 carriers.

4 (3) If any carrier fails to pay the amounts assessed
5 against him or her under the provisions of this section within
6 60 days from the time such notice is served upon him or her,
7 the Department of Insurance upon being advised by the division
8 may suspend or revoke the authorization to insure compensation
9 in accordance with the procedure in s. 440.38(3)(a). The
10 division may permit a carrier to remit any underpayment of
11 assessments for assessments levied after January 1, 2001.

12 (5) Any amount so assessed against and paid by an
13 insurance carrier, self-insurer authorized pursuant to s.
14 440.57, or commercial self-insurance fund authorized under ss.
15 624.460-624.488 shall be allowed as a deduction against the
16 amount of any other tax levied by the state upon the premiums,
17 assessments, or deposits for workers' compensation insurance
18 on contracts or policies of said insurance carrier,
19 self-insurer, or commercial self-insurance fund. Any insurance
20 carrier claiming such a deduction against the amount of any
21 such tax shall not be required to pay any additional
22 retaliatory tax levied pursuant to s. 624.5091 as a result of
23 claiming such deduction. Because deductions under this
24 paragraph are available to insurance carriers, s. 624.5091
25 does not limit such deductions in any manner.

26 Section 4. (1) Effective upon this act becoming a
27 law, there is created the Task Force on Workers' Compensation
28 Administration for the purpose of examining the way in which
29 the workers' compensation system is funded and administered.
30 The Task Force shall consist of seven members appointed as
31 follows: three members appointed by the Governor, one of whom

1 shall serve as chair; two members appointed by the President
2 of the Senate, and two members appointed by the Speaker of the
3 House of Representatives. Appointments shall be made no later
4 than July 1, 2000.

5 (2) The Task Force shall submit recommendations to the
6 Governor, the President of the Senate, and the Speaker of the
7 House of Representatives by January 15, 2001 concerning:

8 (a) Whether the administration of the workers'
9 compensation system should be funded through assessments,
10 general revenue, or some other source, and to what extent.

11 (b) How the funds should be used to accomplish the
12 goal of administering the workers' compensation system in the
13 most cost-effective manner.

14 (c) What services, functions, or entities, including
15 the Workers' Compensation Oversight Board, should be funded as
16 part of the administration of the workers' compensation
17 system.

18 (d) What services and functions, including workplace
19 safety, if any, should be housed within the Division of
20 Workers' Compensation.

21 (e) What cost savings could be achieved in the
22 administration of the workers' compensation system, including
23 the operations of the Division of Workers' Compensation.

24 (f) What organizational changes affecting the
25 administration of the workers' compensation system, if any,
26 should be made to make it more efficient.

27 (3) To assist the task force in its work, the
28 Executive Office of the Governor shall contract for the
29 completion of a budgetary and operational analysis of the
30 Division of Workers' Compensation, detailing the staffing of
31 the division, receipt and expenditure of revenues,

1 reliability of financial records and reports, and the
2 efficiency of internal controls and procedures. The Executive
3 Office of the Governor shall arrange for the study to be
4 completed and transmitted to the task force by September 1,
5 2000.

6 (4) The sum of \$250,000 is appropriated from the
7 Workers' Compensation Administration Trust Fund to the
8 Executive Office of the Governor for the purpose of funding
9 the study required in subsection (3).

10 Section 5. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 invalidity does not affect other provisions or applications of
13 the act which can be given effect without the invalid
14 provision or application, and to this end the provisions of
15 this act are severable.

16 Section 6. Paragraph (a) of subsection (1) of section
17 440.50, Florida Statutes, is amended to read:

18 440.50 Workers' Compensation Administration Trust
19 Fund.--

20 (1)(a) There is established in the State Treasury a
21 special fund to be known as the "Workers' Compensation
22 Administration Trust Fund" for the purpose of providing for
23 the payment of all expenses in respect to the administration
24 of this chapter, including the vocational rehabilitation of
25 injured employees as provided in s. 440.49 and the payments
26 due under s. 440.15(1)(f), the funding of the fixed
27 administrative expenses of the plan,and the funding of the
28 Bureau of Workers' Compensation Fraud within the Department of
29 Insurance. Such fund shall be administered by the division.

30 Section 7. Subsections (13) and (14) are added to
31 section 440.51, Florida Statutes, to read:

1 440.51 Expenses of administration.--

2 (13) As used in s. 440.50 and this section, the term:

3 (a) "Plan" means the workers' compensation joint
4 underwriting plan provided for in s. 627.311(4).

5 (b) "Fixed administrative expenses" means the expenses
6 of the plan, not to exceed \$750,000, which are directly
7 related to the plan's administration but which do not vary in
8 direct relationship to the amount of premium written by the
9 plan and which do not include loss adjustment premiums.

10 (14) Before July 1 in each year, the plan shall notify
11 the division of the amount of the plan's gross written
12 premiums for the preceding calendar year. Whenever the plan's
13 gross written premiums reported to the division are less than
14 \$30 million, the division shall transfer to the plan, subject
15 to appropriation by the Legislature, an amount not to exceed
16 the plan's fixed administrative expenses for the preceding
17 calendar year.

18 Section 8. Paragraph (g) of subsection (4) of section
19 627.311, Florida Statutes, is amended to read:

20 627.311 Joint underwriters and joint reinsurers.--

21 (4)

22 (g) Whenever a deficit exists, the plan shall, within
23 90 days, provide the department with a program to eliminate
24 the deficit within a reasonable time. The deficit may be
25 funded ~~both~~ through increased premiums charged to insureds of
26 the plan for subsequent years, through the use of policyholder
27 surplus attributable to any year, and through assessments on
28 insureds in the plan if the plan uses assessable policies.

29 Section 9. Paragraph (b) of subsection (1) of section
30 440.38, Florida Statutes, is amended to read:

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1 440.38 Security for compensation; insurance carriers
2 and self-insurers.--

3 (1) Every employer shall secure the payment of
4 compensation under this chapter:

5 (b) By furnishing satisfactory proof to the division
6 of ~~its~~ ~~her~~ ~~or~~ ~~his~~ financial ability to pay such compensation
7 individually and on behalf of its subsidiary and affiliated
8 companies with employees in this state and receiving an
9 authorization from the division to pay such compensation
10 directly in accordance with the following provisions:

11 1. The division may, as a condition to such
12 authorization, require such employer to deposit in a
13 depository designated by the division either an indemnity bond
14 or securities, at the option of the employer, of a kind and in
15 an amount determined by the division and subject to such
16 conditions as the division may prescribe, which shall include
17 authorization to the division in the case of default to sell
18 any such securities sufficient to pay compensation awards or
19 to bring suit upon such bonds, to procure prompt payment of
20 compensation under this chapter. In addition, the division
21 shall require, as a condition to authorization to self-insure,
22 proof that the employer has provided for competent personnel
23 with whom to deliver benefits and to provide a safe working
24 environment. Further, the division shall require such
25 employer to carry reinsurance at levels that will ensure the
26 actuarial soundness of such employer in accordance with rules
27 promulgated by the division. The division may by rule require
28 that, in the event of an individual self-insurer's insolvency,
29 such indemnity bonds, securities, and reinsurance policies
30 shall be payable to the Florida Self-Insurers Guaranty
31 Association, Incorporated, created pursuant to s. 440.385.

1 Any employer securing compensation in accordance with the
2 provisions of this paragraph shall be known as a self-insurer
3 and shall be classed as a carrier of her or his own insurance.

4 2. If the employer fails to maintain the foregoing
5 requirements, the division shall revoke the employer's
6 authority to self-insure, unless the employer provides to the
7 division the certified opinion of an independent actuary who
8 is a member of the American Society of Actuaries as to the
9 actuarial present value of the employer's determined and
10 estimated future compensation payments based on cash reserves,
11 using a 4-percent discount rate, and a qualifying security
12 deposit equal to 1.5 times the value so certified. The
13 employer shall thereafter annually provide such a certified
14 opinion until such time as the employer meets the requirements
15 of subparagraph 1. The qualifying security deposit shall be
16 adjusted at the time of each such annual report. Upon the
17 failure of the employer to timely provide such opinion or to
18 timely provide a security deposit in an amount equal to 1.5
19 times the value certified in the latest opinion, the division
20 shall then revoke such employer's authorization to
21 self-insure, and such failure shall be deemed to constitute an
22 immediate serious danger to the public health, safety, or
23 welfare sufficient to justify the summary suspension of the
24 employer's authorization to self-insure pursuant to s. 120.68.

25 3. Upon the suspension or revocation of the employer's
26 authorization to self-insure, the employer shall provide to
27 the division and to the Florida Self-Insurers Guaranty
28 Association, Incorporated, created pursuant to s. 440.385 the
29 certified opinion of an independent actuary who is a member of
30 the American Society of Actuaries of the actuarial present
31 value of the determined and estimated future compensation

1 payments of the employer for claims incurred while the member
2 exercised the privilege of self-insurance, using a discount
3 rate of 4 percent. The employer shall provide such an opinion
4 at 6-month intervals thereafter until such time as the latest
5 opinion shows no remaining value of claims. With each such
6 opinion, the employer shall deposit with the division a
7 qualifying security deposit in an amount equal to the value
8 certified by the actuary. The association has a cause of
9 action against an employer, and against any successor of the
10 employer, who fails to timely provide such opinion or who
11 fails to timely maintain the required security deposit with
12 the division. The association shall recover a judgment in the
13 amount of the actuarial present value of the determined and
14 estimated future compensation payments of the employer for
15 claims incurred while the employer exercised the privilege of
16 self-insurance, together with attorney's fees. For purposes
17 of this section, the successor of an employer means any
18 person, business entity, or group of persons or business
19 entities, which holds or acquires legal or beneficial title to
20 the majority of the assets or the majority of the shares of
21 the employer.

22 4. A qualifying security deposit shall consist, at the
23 option of the employer, of:

24 a. Surety bonds, in a form and containing such terms
25 as prescribed by the division, issued by a corporation surety
26 authorized to transact surety business by the Department of
27 Insurance, and whose policyholders' and financial ratings, as
28 reported in A.M. Best's Insurance Reports, Property-Liability,
29 are not less than "A" and "V", respectively.

30 b. Certificates of deposit with financial
31 institutions, the deposits of which are insured through the

1 Federal Deposit Insurance Corporation or the Federal Savings
2 and Loan Insurance Corporation.

3 c. Irrevocable letters of credit in favor of the
4 division issued by financial institutions described in
5 sub-subparagraph b.

6 d. Direct obligations of the United States Treasury
7 backed by the full faith and credit of the United States.

8 e. Securities issued by this state and backed by the
9 full faith and credit of this state.

10 5. The qualifying security deposit shall be held by
11 the division, or by a depository authorized by the division,
12 exclusively for the benefit of workers' compensation
13 claimants. The security shall not be subject to assignment,
14 execution, attachment, or any legal process whatsoever, except
15 as necessary to guarantee the payment of compensation under
16 this chapter. No surety bond may be terminated, and no other
17 qualifying security may be allowed to lapse, without 90 days'
18 prior notice to the division and deposit by the self-insuring
19 employer of other qualifying security of equal value within 10
20 business days after such notice. Failure to provide such
21 notice or failure to timely provide qualifying replacement
22 security after such notice shall constitute grounds for the
23 division to call or sue upon the surety bond, or to act with
24 respect to other pledged security in any manner necessary to
25 preserve its value for the purposes intended by this section,
26 including the exercise of rights under a letter of credit, the
27 sale of any security at then prevailing market rates, or the
28 withdrawal of any funds represented by any certificate of
29 deposit forming part of the qualifying security deposit;

30 Section 10. Except as otherwise expressly provided in
31 this act, this act shall take effect July 1, 2000.