

By the Committee on Banking and Insurance

311-1832E-01

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 440.02, F.S.; revising definitions of terms
4 used in chapter 440, F.S.; amending s. 440.05,
5 F.S.; revising exemptions from the requirement
6 for employers to obtain workers' compensation
7 coverage; specifying who may be exempt and the
8 conditions for an exemption; specifying the
9 effect of an exemption; requiring businesses,
10 sole proprietors, and partners to maintain
11 certain records; amending s. 440.06, F.S.;
12 requiring employers to secure workers'
13 compensation coverage; amending s. 440.09,
14 F.S.; requiring compensation for accidental
15 compensable injuries; amending s. 440.10, F.S.;
16 revising references to persons who are exempt
17 from coverage to conform; amending s. 440.107,
18 F.S.; authorizing the Division of Workers'
19 Compensation to issue stop-work orders in
20 certain circumstances; amending s. 440.13,
21 F.S.; specifying the value of nonprofessional
22 attendant care provided by a family member that
23 is reimbursable; requiring the carrier to give
24 the employee the opportunity to change
25 physicians under certain circumstances and
26 limitations; revising the effect of an
27 independent medical examination; limiting the
28 admissibility of certain medical opinions;
29 revising the limitation on medical fees;
30 amending s. 440.134, F.S.; revising the
31 definitions applied to workers' compensation

1 managed care arrangements; eliminating
2 provisions mandating the use of such
3 arrangements; revising the procedures governing
4 grievances related to such arrangements;
5 amending s. 440.14, F.S.; revising the
6 computation of the average weekly wage of an
7 employee for the purposes of determining
8 benefits; amending s. 440.15, F.S.; revising
9 the criteria for permanent total disability;
10 revising the compensation rate for impairment
11 income benefits; amending s. 440.185, F.S.;
12 specifying the information that must be
13 included in a report of injury; amending s.
14 440.191, F.S.; requiring the Employee
15 Assistance and Ombudsman Office to initiate
16 contact with an injured employee to discuss
17 rights and responsibilities; revising other
18 duties of the office; eliminating provisions
19 governing informal dispute-resolution
20 procedures; amending s. 440.192, F.S.; revising
21 the procedures for resolving benefit disputes
22 and filing petitions for benefits; specifying
23 the information that must be included in a
24 petition for benefits; amending s. 440.20,
25 F.S.; prescribing the criteria for determining
26 when a lump-sum settlement may be entered;
27 specifying the effect of a lump-sum settlement;
28 amending s. 440.25, F.S.; revising the
29 procedures governing mediation and the hearing
30 of claims; amending s. 440.29, F.S.; requiring
31 opinions of independent medical examiners to be

1 received into evidence under certain
2 conditions; amending s. 440.34, F.S.; revising
3 the limit on the amount of attorney's fees that
4 may be approved by a judge of compensation
5 claims and eliminating factors that the judge
6 must consider; applying such limits to any
7 agreement related to benefits under chapter
8 440, F.S.; amending s. 440.345, F.S.; requiring
9 the reporting of attorney's fees to the Office
10 of the Judges of Compensation Claims and
11 requiring the Office of the Judges of
12 Compensation Claims to report such data to the
13 Legislature and Governor; amending s. 440.39,
14 F.S.; providing that the section does not
15 impose a duty on the employer to preserve
16 evidence; amending s. 627.412, F.S.; providing
17 that a public entity or agency may purchase a
18 consolidated insurance program for public
19 construction projects; repealing s. 440.4416,
20 F.S., which creates the Workers' Compensation
21 Oversight Board; repealing s. 440.45(3), F.S.;
22 eliminating the requirement that the Chief
23 Judge select judges to rotate as docketing
24 judges; requiring the Department of Insurance
25 to conduct a study and submit a report to the
26 Legislature related to health insurance
27 coverage for workplace injuries; providing for
28 severability; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Subsections (7), (14), (15), (16), and (37)
2 of section 440.02, Florida Statutes, are amended to read:

3 440.02 Definitions.--When used in this chapter, unless
4 the context clearly requires otherwise, the following terms
5 shall have the following meanings:

6 (7) "Construction industry" means any business that
7 carries out for-profit activities involving ~~the carrying out~~
8 ~~of~~ any building, clearing, filling, excavation, or substantial
9 improvement in the size or use of any structure or the
10 appearance of any land. ~~When appropriate to the context,~~
11 ~~"construction" refers to the act of construction or the result~~
12 ~~of construction.~~ However, the term "construction" does shall
13 not mean a homeowner's landowner's act of construction or the
14 result of a construction upon his or her own premises,
15 provided such premises are not intended to be sold or resold
16 or leased by the owner within 1 year after the commencement of
17 the construction. The division may by rule establish those
18 standard industrial classification codes and their definitions
19 which meet the criteria of the definition of the term
20 "construction industry" as set forth in this section.

21 (14)(a) "Employee" means any person who receives
22 remuneration from an employer for the performance of any work
23 or service or the provision of any goods or supplies, whether
24 by engaged in any employment under any appointment or contract
25 for of hire or apprenticeship, express or implied, oral or
26 written, whether lawfully or unlawfully employed, and
27 includes, but is not limited to, aliens and minors.

28 (b) "Employee" includes any person who is an officer
29 of a corporation and who performs services within this state
30 for remuneration for such corporation ~~within this state,~~
31 whether or not such services are continuous.

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

4 ~~2. As to officers of a corporation who are actively~~
5 ~~engaged in the construction industry, no more than three~~
6 ~~officers may elect to be exempt from this chapter by filing~~
7 ~~written notice of the election with the division as provided~~
8 ~~in s. 440.05.~~

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

12
13 Services are presumed to have been rendered to the corporation
14 if the officer is compensated by other than dividends upon
15 shares of stock of the corporation which the officer owns.

16 (c) "Employee" includes all persons who are being paid
17 by a general contractor for work performed by or as a
18 subcontractor or employee of a subcontractor are employees of
19 the general contractor, except any person who:~~a sole~~
20 ~~proprietor or a partner who devotes full time to the~~
21 ~~proprietorship or partnership and, except as provided in this~~
22 ~~paragraph, elects to be included in the definition of employee~~
23 ~~by filing notice thereof as provided in s. 440.05. Partners or~~
24 ~~sole proprietors actively engaged in the construction industry~~
25 ~~are considered employees unless they elect to be excluded from~~
26 ~~the definition of employee by filing written notice of the~~
27 ~~election with the division as provided in s. 440.05. However,~~
28 ~~no more than three partners in a partnership that is actively~~
29 ~~engaged in the construction industry may elect to be excluded.~~
30 ~~A sole proprietor or partner who is actively engaged in the~~
31 ~~construction industry and who elects to be exempt from this~~

1 ~~chapter by filing a written notice of the election with the~~
2 ~~division as provided in s. 440.05 is not an employee. For~~
3 ~~purposes of this chapter, an independent contractor is an~~
4 ~~employee unless he or she meets all of the conditions set~~
5 ~~forth in subparagraph (d)1.~~

6 ~~(d) "Employee" does not include:~~

7 ~~1. An independent contractor, if:~~

8 ~~a. The independent contractor~~

9 ~~1. Maintains a separate business with his or her own~~
10 ~~work facility, truck, equipment, materials, or similar~~
11 ~~accommodations;~~

12 ~~2.b. Has a social security number; or The independent~~
13 ~~contractor holds or has applied for a federal employer~~
14 ~~identification number, if required to do so by any federal,~~
15 ~~state, or local statute, rule, or regulation unless the~~
16 ~~independent contractor is a sole proprietor who is not~~
17 ~~required to obtain a federal employer identification number~~
18 ~~under state or federal requirements;~~

19 ~~3.c. The independent contractor performs or agrees to~~
20 ~~perform specific services or work for specific amounts of~~
21 ~~money and Controls the means of performing the services or~~
22 ~~work that he or she was hired to perform or supply;~~

23 ~~4.d. The independent contractor Incurs the principal~~
24 ~~expenses related to the service or work that he or she~~
25 ~~performs or agrees to perform;~~

26 ~~5.e. The independent contractor Is responsible for the~~
27 ~~satisfactory completion of work or services that he or she~~
28 ~~performs or agrees to perform and is or could be held liable~~
29 ~~for a failure to complete the work or services;~~

30 ~~6.f. The independent contractor Receives compensation~~
31 ~~for work or services performed for a commission or on a~~

1 per-job or competitive-bid basis and not on any other basis,
2 such as salary or wages;

3 ~~7.g. The independent contractor~~ May realize a profit
4 or suffer a loss in connection with performing work or
5 services; and

6 ~~8.h. The independent contractor~~ Has continuing or
7 recurring business liabilities or obligations. ~~7~~ and

8 ~~i. The success or failure of the independent~~
9 ~~contractor's business depends on the relationship of business~~
10 ~~receipts to expenditures.~~

11
12 ~~However, the determination as to whether an individual~~
13 ~~included in the Standard Industrial Classification Manual of~~
14 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~
15 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~
16 ~~2448, or 2449, or a newspaper delivery person, is an~~
17 ~~independent contractor is governed not by the criteria in this~~
18 ~~paragraph but by common-law principles, giving due~~
19 ~~consideration to the business activity of the individual.~~

20 (d) The term "employee" does not include:

21 ~~1.2.~~ A real estate salesperson or agent, if that
22 person agrees, in writing, to perform for remuneration solely
23 by way of commission.

24 ~~2.3.~~ Bands, orchestras, and musical and theatrical
25 performers, including disk jockeys, performing in licensed
26 premises as defined in chapter 562, if a written contract
27 evidencing an independent contractor relationship is entered
28 into before the commencement of such entertainment.

29 ~~3.4.~~ An owner-operator of a motor vehicle who
30 transports property under a written contract with a motor
31 carrier which evidences a relationship by which the

1 owner-operator assumes the responsibility of an employer for
2 the performance of the contract, if the owner-operator is
3 required to furnish the necessary motor vehicle equipment and
4 all costs incidental to the performance of the contract,
5 including, but not limited to, fuel, taxes, licenses, repairs,
6 and hired help; and the owner-operator is paid a commission
7 for transportation service and is not paid by the hour or on
8 some other time-measured basis.

9 ~~4.5.~~ A person whose employment is both casual and not
10 in the course of the trade, business, profession, or
11 occupation of the employer.

12 ~~5.6.~~ A volunteer, except a volunteer worker for the
13 state or a county, municipality, or other governmental entity.
14 A person who does not receive monetary remuneration for
15 services is presumed to be a volunteer unless there is
16 substantial evidence that a valuable consideration was
17 intended by both employer and employee. For purposes of this
18 chapter, the term "volunteer" includes, but is not limited to:

19 a. Persons who serve in private nonprofit agencies and
20 who receive no compensation other than expenses in an amount
21 less than or equivalent to the standard mileage and per diem
22 expenses provided to salaried employees in the same agency or,
23 if such agency does not have salaried employees who receive
24 mileage and per diem, then such volunteers who receive no
25 compensation other than expenses in an amount less than or
26 equivalent to the customary mileage and per diem paid to
27 salaried workers in the community as determined by the
28 division; and

29 b. Volunteers participating in federal programs
30 established under Pub. L. No. 93-113.

31 6. Domestic servants in private houses.

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

12 8. Professional athletes, such as professional boxers,
13 wrestlers, baseball, football, basketball, hockey, polo,
14 tennis, jai alai, and similar players, and motor sports teams
15 competing in a motor racing event as defined in s. 549.08.

16 9. Persons performing labor under a sentence of a
17 court to perform community services as provided in s. 316.193.

18 ~~7. Any officer of a corporation who elects to be~~
19 ~~exempt from this chapter.~~

20 ~~8. A sole proprietor or officer of a corporation who~~
21 ~~actively engages in the construction industry, and a partner~~
22 ~~in a partnership that is actively engaged in the construction~~
23 ~~industry, who elects to be exempt from the provisions of this~~
24 ~~chapter. Such sole proprietor, officer, or partner is not an~~
25 ~~employee for any reason until the notice of revocation of~~
26 ~~election filed pursuant to s. 440.05 is effective.~~

27 ~~10.9.~~ An exercise rider who does not work for a single
28 horse farm or breeder, and who is compensated for riding on a
29 case-by-case basis, provided a written contract is entered
30 into prior to the commencement of such activity which
31

1 evidences that an employee/employer relationship does not
2 exist.

3 ~~11.10.~~ A taxicab, limousine, or other passenger
4 vehicle-for-hire driver who operates said vehicles pursuant to
5 a written agreement with a company which provides any
6 dispatch, marketing, insurance, communications, or other
7 services under which the driver and any fees or charges paid
8 by the driver to the company for such services are not
9 conditioned upon, or expressed as a proportion of, fare
10 revenues.

11 (15)(a) "Employer" means the state and all political
12 subdivisions thereof, all public and quasi-public corporations
13 therein, every person carrying on any employment, and the
14 legal representative of a deceased person or the receiver or
15 trustees of any person. If the employer is a corporation,
16 parties in actual control of the corporation, including, but
17 not limited to, the president, officers who exercise broad
18 corporate powers, directors, and all shareholders who directly
19 or indirectly own a controlling interest in the corporation,
20 are considered the employer for the purposes of ss. 440.105
21 and 440.106.

22 (b) However, a landowner shall not be considered the
23 employer of any person hired by the landowner to carry out
24 construction upon his or her own premises, if those premises
25 are not intended for immediate sale or resale.

26 (16)~~(a)~~ "Employment," means, not including subsection
27 (4), the payment of any remuneration for work or services
28 rendered or promised, or goods or services provided or
29 promised and, subject to the other provisions of this chapter,
30 means any service performed by an employee for the person
31 employing him or her; and

1 ~~(b) "Employment" includes:~~

2 (a)1. Employment by the state and all political
3 subdivisions thereof and all public and quasi-public
4 corporations therein, including officers elected at the polls.

5 (b)2. All private employments in which four or more
6 employees are employed by the same employer or, with respect
7 to the construction industry, all private employment in which
8 one or more employees are employed by the same employer.

9 (c)3. Volunteer firefighters responding to or
10 assisting with fire or medical emergencies whether or not the
11 firefighters are on duty.

12 ~~(c) "Employment" does not include service performed by~~
13 ~~or as:~~

14 ~~1. Domestic servants in private homes.~~

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

26 ~~3. Professional athletes, such as professional boxers,~~
27 ~~wrestlers, baseball, football, basketball, hockey, polo,~~
28 ~~tennis, jai alai, and similar players, and motorsports teams~~
29 ~~competing in a motor racing event as defined in s. 549.08.~~

30 ~~4. Labor under a sentence of a court to perform~~
31 ~~community services as provided in s. 316.193.~~

1 (37) "Catastrophic injury" means a permanent
2 impairment constituted by:

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

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

7 (c) Severe brain or closed-head injury as evidenced
8 by:

9 1. Severe sensory or motor disturbances;

10 2. Severe communication disturbances;

11 3. Severe complex integrated disturbances of cerebral
12 function;

13 4. Severe episodic neurological disorders; or

14 5. Other severe brain and closed-head injury
15 conditions at least as severe in nature as any condition
16 provided in subparagraphs 1.-4.;

17 (d) Second-degree or third-degree burns of 25 percent
18 or more of the total body surface or third-degree burns of 5
19 percent or more to the face and hands; or

20 (e) Total or industrial blindness; or

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

28 Section 2. Section 440.05, Florida Statutes, is
29 amended to read:

30 (Substantial rewording of section. See
31 s. 440.05, F.S., for present text.)

1 440.05 Election of exemption; revocation of
2 election.--

3 (1) The following classes of persons, as defined by s.
4 440.02, who are not primarily engaged in the construction
5 industry, as that term is defined in s. 440.02, are exempt
6 from this chapter unless they elect otherwise in accordance
7 with subsection (2):

8 (a) Sole proprietors;

9 (b) Partners as defined in this section; and

10 (c) Corporate officers as defined in this section.

11 (2) Any person who is exempted from this chapter under
12 this section who secures, or whose employer secures for him or
13 her, workers' compensation insurance coverage is considered to
14 have waived the right to such an exemption and is subject to
15 the provisions of this chapter.

16 (3) Every enterprise conducting business in this state
17 shall maintain business records as specified by the division
18 by rule, which rules must include the provision that any
19 corporation with exempt officers and any partnership with
20 exempt partners must maintain written statements of those
21 exempted persons affirmatively acknowledging each such
22 individual's exempt status.

23 (4) Any sole proprietor or partner claiming an
24 exemption under this section shall maintain a copy of his or
25 her federal income tax records for each of the immediately
26 previous 3 years in which he or she claims an exemption. Such
27 federal income tax records must include a complete copy of the
28 following for each year in which an exemption is claimed:

29 (a) For sole proprietors, a copy of Federal Income Tax
30 Form 1040 and its accompanying Schedule C;

31

1 (b) For partners, a copy of the partner's Federal
2 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
3 Form 1040 and its accompanying Schedule E. The sole proprietor
4 or partner in question shall produce, upon request by the
5 division, a copy of those documents together with a statement
6 by the sole proprietor that the tax records provided are true
7 and accurate copies of what the sole proprietor or partner has
8 filed with the federal Internal Revenue Service. The statement
9 must be signed under oath by the sole proprietor or partner in
10 question and must be notarized. The division shall issue a
11 stop-work order under s. 440.107(5) to any sole proprietor or
12 partner who fails or refuses to produce a copy of the tax
13 records and affidavit required under this paragraph to the
14 division within 3 business days after that request and who has
15 failed to otherwise secure insurance for the provision of
16 workers' compensation benefits for himself or herself if
17 required under this chapter to do so.

18 (5) Any corporate officer claiming an exemption under
19 this section must be listed on the records of this state's
20 Secretary of State, Division of Corporations, as a corporate
21 officer. If the person who claims exemption as a corporate
22 officer is not so listed on the records of the Secretary of
23 State, the individual must provide to the division, upon
24 request by the division, a notarized affidavit stating that
25 the individual is a bona fide officer of the corporation and
26 stating the date his or her appointment or election as a
27 corporate officer became or will become effective. The
28 statement must be signed under oath by both the officer in
29 question and the president or chief operating officer of the
30 corporation and must be notarized. The division shall issue a
31 stop-work order under s. 440.107(1) to any person who claims

1 to be exempt as a corporate officer but who fails or refuses
2 to produce the documents required under this subsection to the
3 division within 3 business days after the request is made and
4 who has failed to otherwise secure the insurance of workers'
5 compensation benefits for himself or herself if required under
6 this chapter to do so.

7 (6) A sole proprietor, partner, or corporate officer
8 of a business entity that has not been in operation long
9 enough to have filed with the Internal Revenue Service, or to
10 have been required by the Internal Revenue Service to file,
11 its first annual federal income tax return is not eligible for
12 exemption from this chapter.

13 (7) Exemptions pertain only to the person claiming
14 exemption and only for the entity that is the subject of the
15 federal income tax reports filed by the person claiming the
16 exemption. A separate exemption is required for every
17 proprietorship, partnership, or corporation from which an
18 individual receives any remuneration for labor, services, or
19 products provided.

20 (8) Sole proprietors, partners, and corporate
21 officers, as those terms are defined in s. 440.02, of sole
22 proprietorships, partnerships, and corporations that are
23 primarily engaged in the construction industry as that term is
24 defined in s. 440.02 are not eligible for exemption from this
25 chapter.

26 Section 3. Section 440.06, Florida Statutes, is
27 amended to read:

28 440.06 Failure to secure compensation; effect.--Every
29 employer who fails to secure the payment of compensation as
30 provided in s. 440.10 by failing to meet the requirements of
31 ~~under this chapter as provided in s. 440.38 may not, in any~~

1 suit brought against him or her by an employee subject to this
2 chapter to recover damages for injury or death, defend such a
3 suit on the grounds that the injury was caused by the
4 negligence of a fellow servant, that the employee assumed the
5 risk of his or her employment, or that the injury was due to
6 the comparative negligence of the employee.

7 Section 4. Subsection (1) of section 440.09, Florida
8 Statutes, is amended to read:

9 440.09 Coverage.--

10 (1) The employer shall pay compensation or furnish
11 benefits required by this chapter if the employee suffers an
12 accidental compensable injury or death arising out of work
13 performed in the course and the scope of employment. The
14 injury, its occupational cause, and any resulting
15 manifestations or disability shall be established to a
16 reasonable degree of medical certainty and by objective
17 medical findings. Mental or nervous injuries occurring as a
18 manifestation of an injury compensable under this section
19 shall be demonstrated by clear and convincing evidence.

20 (a) This chapter does not require any compensation or
21 benefits for any subsequent injury the employee suffers as a
22 result of an original injury arising out of and in the course
23 of employment unless the original injury is the major
24 contributing cause of the subsequent injury.

25 (b) If an injury arising out of and in the course of
26 employment combines with a preexisting disease or condition to
27 cause or prolong disability or need for treatment, the
28 employer must pay compensation or benefits required by this
29 chapter only to the extent that the injury arising out of and
30 in the course of employment is and remains the major
31 contributing cause of the disability or need for treatment.

1 (c) Death resulting from an operation by a surgeon
2 furnished by the employer for the cure of hernia as required
3 in s. 440.15(6) shall for the purpose of this chapter be
4 considered to be a death resulting from the accident causing
5 the hernia.

6 (d) If an accident happens while the employee is
7 employed elsewhere than in this state, which would entitle the
8 employee or his or her dependents to compensation if it had
9 happened in this state, the employee or his or her dependents
10 are entitled to compensation if the contract of employment was
11 made in this state, or the employment was principally
12 localized in this state. However, if an employee receives
13 compensation or damages under the laws of any other state, the
14 total compensation for the injury may not be greater than is
15 provided in this chapter.

16 Section 5. Section 440.10, Florida Statutes, is
17 amended to read:

18 440.10 Liability for compensation.--

19 (1)(a) Every employer coming within the provisions of
20 this chapter, including any brought within the chapter by
21 ~~waiver of exclusion or of exemption~~, shall be liable for, and
22 shall secure, the payment to his or her employees, or any
23 physician, surgeon, or pharmacist providing services under the
24 provisions of s. 440.13, of the compensation payable under ss.
25 440.13, 440.15, and 440.16. Any contractor or subcontractor
26 who engages in any public or private construction in the state
27 shall secure and maintain compensation for his or her
28 employees under this chapter as provided in s. 440.38.

29 (b) In case a contractor sublets any part or parts of
30 his or her contract work to a subcontractor or subcontractors,
31 all of the employees of such contractor and subcontractor or

1 subcontractors engaged on such contract work shall be deemed
2 to be employed in one and the same business or establishment;
3 and the contractor shall be liable for, and shall secure, the
4 payment of compensation to all such employees, except to
5 employees of a subcontractor who has secured such payment.

6 (c) A contractor shall ~~may~~ require a subcontractor to
7 provide evidence of workers' compensation insurance ~~or a copy~~
8 ~~of his or her certificate of election. A subcontractor~~
9 ~~electing to be exempt as a sole proprietor, partner, or~~
10 ~~officer of a corporation shall provide a copy of his or her~~
11 ~~certificate of election to the contractor.~~

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

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

28 (e) A subcontractor is not liable for the payment of
29 compensation to the employees of another subcontractor on such
30 contract work and is not protected by the
31 exclusiveness-of-liability provisions of s. 440.11 from action

1 at law or in admiralty on account of injury of such employee
2 of another subcontractor.

3 (f) If an employer willfully fails to secure
4 compensation as required by this chapter, the division may
5 assess against the employer a penalty not to exceed \$5,000 for
6 each employee of that employer who is classified by the
7 employer as an independent contractor but who is found by the
8 division to not meet the criteria for an independent
9 contractor that are set forth in s. 440.02.

10 (g) For purposes of this section, a person is
11 conclusively presumed to be an independent contractor if+

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

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

19
20 ~~A sole proprietor, partner, or officer of a corporation who~~
21 ~~elects exemption from this chapter by filing a certificate of~~
22 ~~election under s. 440.05 may not recover benefits or~~
23 ~~compensation under this chapter. An independent contractor~~
24 ~~who provides the general contractor with both an affidavit~~
25 ~~stating that he or she meets the requirements of s.~~
26 ~~440.02(14)(d) and a certificate of exemption is not an~~
27 ~~employee under s. 440.02(14)(c) and may not recover benefits~~
28 ~~under this chapter. For purposes of determining the~~
29 ~~appropriate premium for workers' compensation coverage,~~
30 ~~carriers may not consider any person who meets the~~
31 ~~requirements of this paragraph to be an employee.~~

1 (2) Compensation shall be payable irrespective of
2 fault as a cause for the injury, except as provided in s.
3 440.09(3).

4 Section 6. Subsection (5) of section 440.107, Florida
5 Statutes, is amended to read:

6 440.107 Division powers to enforce employer compliance
7 with coverage requirements.--

8 (5) Whenever the division determines that an employer
9 who is required to secure the payment to his or her employees
10 of the compensation provided for by this chapter has failed to
11 do so or the division determines that an employer has
12 misrepresented to a carrier the size or classification of the
13 employer's payroll, such failure or misrepresentation shall be
14 deemed an immediate serious danger to public health, safety,
15 or welfare sufficient to justify service by the division of a
16 stop-work order on the employer, requiring the cessation of
17 all business operations within the state at the place of
18 employment or job site. The order shall take effect upon the
19 date of service upon the employer, unless the employer
20 provides evidence satisfactory to the division of having
21 secured any necessary insurance or self-insurance and pays a
22 civil penalty to the division, to be deposited by the division
23 into the Workers' Compensation Administration Trust Fund, in
24 the amount of \$100 per day for each day the employer was not
25 in compliance with this chapter.

26 Section 7. Subsections (2), (5), (12), and (14) of
27 section 440.13, Florida Statutes, are amended to read:

28 440.13 Medical services and supplies; penalty for
29 violations; limitations.--

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

31

1 (a) Subject to the limitations specified elsewhere in
2 this chapter, the employer shall furnish to the employee such
3 medically necessary remedial treatment, care, and attendance
4 for such period as the nature of the injury or the process of
5 recovery may require, including medicines, medical supplies,
6 durable medical equipment, orthoses, prostheses, and other
7 medically necessary apparatus. Remedial treatment, care, and
8 attendance, including work-hardening programs or
9 pain-management programs accredited by the Commission on
10 Accreditation of Rehabilitation Facilities or Joint Commission
11 on the Accreditation of Health Organizations or
12 pain-management programs affiliated with medical schools,
13 shall be considered as covered treatment only when such care
14 is given based on a referral by a physician as defined in this
15 chapter. Each facility shall maintain outcome data, including
16 work status at discharges, total program charges, total number
17 of visits, and length of stay. The department shall utilize
18 such data and report to the President of the Senate and the
19 Speaker of the House of Representatives regarding the efficacy
20 and cost-effectiveness of such program, no later than October
21 1, 1994. Medically necessary treatment, care, and attendance
22 does not include chiropractic services in excess of 18
23 treatments or rendered 8 weeks beyond the date of the initial
24 chiropractic treatment, whichever comes first, unless the
25 carrier authorizes additional treatment or the employee is
26 catastrophically injured.

27 (b) The employer shall provide appropriate
28 professional or nonprofessional attendant care performed only
29 at the direction and control of a physician when such care is
30 medically necessary. The value of nonprofessional attendant
31

1 care provided by a family member must be determined as
2 follows:

3 1. If the family member is not employed, the per-hour
4 value equals the federal minimum hourly wage.

5 2. If the family member is employed and elects to
6 leave that employment to provide attendant or custodial care,
7 the per-hour value of that care equals the per-hour value of
8 the family member's former employment, not to exceed the
9 per-hour value of such care available in the community at
10 large.

11 3. If the family member remains employed while
12 providing attendant or custodial care, the per-hour value of
13 that care equals the per-hour value of the family member's
14 employment, not to exceed the per-hour value of such care
15 available in the community at large.

16 4. A family member or a combination of family members
17 providing nonprofessional attendant care under this paragraph
18 may not be compensated for more than a total of 12 hours per
19 day.

20 (c) If the employer fails to provide treatment or care
21 required by this section after request by the injured
22 employee, the employee may obtain such treatment at the
23 expense of the employer, if the treatment is compensable and
24 medically necessary. There must be a specific request for the
25 treatment, and the employer or carrier must be given a
26 reasonable time period within which to provide the treatment
27 or care. However, the employee is not entitled to recover any
28 amount personally expended for the treatment or service unless
29 he or she has requested the employer to furnish that treatment
30 or service and the employer has failed, refused, or neglected
31 to do so within a reasonable time or unless the nature of the

1 injury requires such treatment, nursing, and services and the
2 employer or his or her superintendent or foreman, having
3 knowledge of the injury, has neglected to provide the
4 treatment or service.

5 (d) The carrier has the right to transfer the care of
6 an injured employee from the attending health care provider if
7 an independent medical examination determines that the
8 employee is not making appropriate progress in recuperation.

9 (e) Except in emergency situations and for treatment
10 rendered by a managed care arrangement, after any initial
11 examination and diagnosis by a physician providing remedial
12 treatment, care, and attendance, and before a proposed course
13 of medical treatment begins, each insurer shall review, in
14 accordance with the requirements of this chapter, the proposed
15 course of treatment, to determine whether such treatment would
16 be recognized as reasonably prudent. The review must be in
17 accordance with all applicable workers' compensation practice
18 parameters. The insurer must accept any such proposed course
19 of treatment unless the insurer notifies the physician of its
20 specific objections to the proposed course of treatment by the
21 close of the tenth business day after notification by the
22 physician, or a supervised designee of the physician, of the
23 proposed course of treatment.

24 (f) Upon the written request of the employee, the
25 carrier shall give the employee the opportunity for one change
26 of physician during the course of treatment for any one
27 accident. The employee shall be entitled to select another
28 physician from among not fewer than three carrier-authorized
29 physicians not professionally affiliated.

30 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

31

1 (a) In any dispute concerning overutilization, medical
2 benefits, compensability, or disability under this chapter,
3 the carrier or the employee may select an independent medical
4 examiner. The examiner may be a health care provider treating
5 or providing other care to the employee. An independent
6 medical examiner may not render an opinion outside his or her
7 area of expertise, as demonstrated by licensure and applicable
8 practice parameters. Upon the written request of the employee,
9 the carrier shall pay the cost of one independent medical
10 examination per accident. The cost of any additional
11 independent medical examination must be borne by the party
12 requesting the additional independent medical examination. The
13 costs of independent medical examinations expressly relied
14 upon by the judge of compensation claims to award benefits in
15 the final compensation order are taxable costs under s.
16 440.34(3).

17 ~~(b) Each party is bound by his or her selection of an~~
18 ~~independent medical examiner and is entitled to an alternate~~
19 ~~examiner only if:~~

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

23 ~~2. The examiner ceases to practice in the specialty~~
24 ~~relevant to the employee's condition;~~

25 ~~3. The examiner is unavailable due to injury, death,~~
26 ~~or relocation outside a reasonably accessible geographic area;~~
27 ~~or~~

28 ~~4. The parties agree to an alternate examiner.~~

29
30 Any party may request, or a judge of compensation claims may
31 require, designation of a division medical advisor as an

1 independent medical examiner. The opinion of the advisors
2 acting as examiners shall not be afforded the presumption set
3 forth in paragraph (9)(c).

4 (c) The carrier may, at its election, contact the
5 claimant directly to schedule a reasonable time for an
6 independent medical examination. The carrier must confirm the
7 scheduling agreement in writing within 5 days and notify
8 claimant's counsel, if any, at least 7 days before the date
9 upon which the independent medical examination is scheduled to
10 occur. An attorney representing a claimant is not authorized
11 to schedule independent medical evaluations under this
12 subsection.

13 (d) If the employee fails to appear for the
14 independent medical examination without good cause and fails
15 to advise the physician at least 24 hours before the scheduled
16 date for the examination that he or she cannot appear, the
17 employee is barred from recovering compensation for any period
18 during which he or she has refused to submit to such
19 examination. Further, the employee shall reimburse the carrier
20 50 percent of the physician's cancellation or no-show fee
21 unless the carrier that schedules the examination fails to
22 timely provide to the employee a written confirmation of the
23 date of the examination pursuant to paragraph (c) which
24 includes an explanation of why he or she failed to appear. The
25 employee may appeal to a judge of compensation claims for
26 reimbursement when the carrier withholds payment in excess of
27 the authority granted by this section.

28 (e) No medical opinion other than the opinion of a
29 medical advisor appointed by the judge of compensation claims
30 or division, an independent medical examiner, or an authorized
31 treating provider is admissible in proceedings before the

1 judges of compensation claims. The employee or the carrier may
2 each submit into evidence, and the judge of compensation
3 claims shall admit, the medical opinion of no more than one
4 independent medical examiner per specialty.

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

9 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
10 REIMBURSEMENT ALLOWANCES.--

11 (a) A three-member panel is created, consisting of the
12 Insurance Commissioner, or the Insurance Commissioner's
13 designee, and two members to be appointed by the Governor,
14 subject to confirmation by the Senate, one member who, on
15 account of present or previous vocation, employment, or
16 affiliation, shall be classified as a representative of
17 employers, the other member who, on account of previous
18 vocation, employment, or affiliation, shall be classified as a
19 representative of employees. The panel shall determine
20 statewide schedules of maximum reimbursement allowances for
21 medically necessary treatment, care, and attendance provided
22 by physicians, hospitals, ambulatory surgical centers,
23 work-hardening programs, pain programs, and durable medical
24 equipment. The maximum reimbursement allowances for inpatient
25 hospital care shall be based on a schedule of per diem rates,
26 to be approved by the three-member panel no later than March
27 1, 1994, to be used in conjunction with a precertification
28 manual as determined by the division. All compensable charges
29 for hospital outpatient care shall be reimbursed at 75 percent
30 of usual and customary charges. Until the three-member panel
31 approves a schedule of per diem rates for inpatient hospital

1 care and it becomes effective, all compensable charges for
2 hospital inpatient care must be reimbursed at 75 percent of
3 their usual and customary charges. Annually, the three-member
4 panel shall adopt schedules of maximum reimbursement
5 allowances for physicians, hospital inpatient care, hospital
6 outpatient care, ambulatory surgical centers, work-hardening
7 programs, and pain programs. However, the maximum percentage
8 of increase in the individual reimbursement allowance may not
9 exceed the percentage of increase in the Consumer Price Index
10 for the previous year, except when the three-member panel
11 adopts a nationally recognized reimbursement methodology. An
12 individual physician, hospital, ambulatory surgical center,
13 pain program, or work-hardening program shall be reimbursed
14 either the usual and customary charge for treatment, care, and
15 attendance, the agreed-upon contract price, or the maximum
16 reimbursement allowance in the appropriate schedule, whichever
17 is less.

18 (b) As to reimbursement for a prescription medication,
19 the reimbursement amount for a prescription shall be the
20 average wholesale price times 1.2 plus \$4.18 for the
21 dispensing fee, except where the carrier has contracted for a
22 lower amount. Fees for pharmaceuticals and pharmaceutical
23 services shall be reimbursable at the applicable fee schedule
24 amount. Where the employer or carrier has contracted for such
25 services and the employee elects to obtain them through a
26 provider not a party to the contract, the carrier shall
27 reimburse at the schedule, negotiated, or contract price,
28 whichever is lower.

29 (c) Reimbursement for all fees and other charges for
30 such treatment, care, and attendance, including treatment,
31 care, and attendance provided by any hospital or other health

1 care provider, ambulatory surgical center, work-hardening
2 program, or pain program, must not exceed the amounts provided
3 by the uniform schedule of maximum reimbursement allowances as
4 determined by the panel or as otherwise provided in this
5 section. This subsection also applies to independent medical
6 examinations performed by health care providers under this
7 chapter. Until the three-member panel approves a uniform
8 schedule of maximum reimbursement allowances and it becomes
9 effective, all compensable charges for treatment, care, and
10 attendance provided by physicians, ambulatory surgical
11 centers, work-hardening programs, or pain programs shall be
12 reimbursed at the lowest maximum reimbursement allowance
13 across all 1992 schedules of maximum reimbursement allowances
14 for the services provided regardless of the place of service.
15 In determining the uniform schedule, the panel shall first
16 approve the data which it finds representative of prevailing
17 charges in the state for similar treatment, care, and
18 attendance of injured persons. Each health care provider,
19 health care facility, ambulatory surgical center,
20 work-hardening program, or pain program receiving workers'
21 compensation payments shall maintain records verifying their
22 usual charges. In establishing the uniform schedule of maximum
23 reimbursement allowances, the panel must consider:

24 1. The levels of reimbursement for similar treatment,
25 care, and attendance made by other health care programs or
26 third-party providers;

27 2. The impact upon cost to employers for providing a
28 level of reimbursement for treatment, care, and attendance
29 which will ensure the availability of treatment, care, and
30 attendance required by injured workers;

31

1 3. The financial impact of the reimbursement
2 allowances upon health care providers and health care
3 facilities, including trauma centers as defined in s.
4 395.4001, and its effect upon their ability to make available
5 to injured workers such medically necessary remedial
6 treatment, care, and attendance. The uniform schedule of
7 maximum reimbursement allowances must be reasonable, must
8 promote health care cost containment and efficiency with
9 respect to the workers' compensation health care delivery
10 system, and must be sufficient to ensure availability of such
11 medically necessary remedial treatment, care, and attendance
12 to injured workers; and

13 4. The most recent average maximum allowable rate of
14 increase for hospitals determined by the Health Care Board
15 under chapter 408.

16 (14) PAYMENT OF MEDICAL FEES.--

17 (a) Except for emergency care treatment, fees for
18 medical services are payable only to a health care provider
19 certified and authorized to render remedial treatment, care,
20 or attendance under this chapter. A health care provider may
21 not collect or receive a fee from an injured employee within
22 this state, except as otherwise provided by this chapter. Such
23 providers have recourse against the employer or carrier for
24 payment for services rendered in accordance with this chapter.

25 (b) Fees charged for remedial treatment, care, and
26 attendance may not exceed the applicable fee schedules adopted
27 under this chapter, except as provided under a contract
28 entered into between an employer or carrier and a certified
29 health care provider or health care facility for the payment
30 of medical services for covered expenses.

31

1 (c) Notwithstanding any other provision of this
2 chapter, following overall maximum medical improvement from an
3 injury compensable under this chapter, the employee is
4 obligated to pay a copayment of \$10 per visit for medical
5 services. The copayment shall not apply to emergency care
6 provided to the employee.

7 Section 8. Paragraph (d) of subsection (1), paragraph
8 (b) of subsection (2), and subsection (15) of section 440.134,
9 Florida Statutes, are amended to read:

10 440.134 Workers' compensation managed care
11 arrangement.--

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

13 (d) "Grievance" means a direct written complaint filed
14 by an injured worker expressing dissatisfaction with the
15 insurer's workers' compensation managed care arrangement's
16 refusal to provide medical care provided by an insurer's
17 ~~workers' compensation managed care arrangement health care~~
18 ~~providers, expressed in writing by an injured worker.~~

19 (2)

20 (b) ~~Effective January 1, 1997,~~The employer shall,
21 subject to the limitations specified elsewhere in this
22 chapter, furnish to the employee ~~solely~~ through managed care
23 arrangements or without a managed care arrangement such
24 medically necessary remedial treatment, care, and attendance
25 for such period as the nature of the injury or the process of
26 recovery requires.

27 (15)(a) A workers' compensation managed care
28 arrangement must have and use procedures for hearing
29 complaints and resolving written grievances from injured
30 workers and health care providers. The procedures must be
31 aimed at mutual agreement for settlement and may include

1 arbitration procedures. Procedures provided herein are in
2 addition to other procedures contained in this chapter.

3 (b) The grievance procedure must be described in
4 writing and provided to the affected workers and health care
5 providers.

6 (c) At the time the workers' compensation managed care
7 arrangement is implemented, the insurer must provide detailed
8 information to workers and health care providers describing
9 how a grievance may be registered with the insurer. Within 15
10 days after the date of the request for medical care is
11 received by the insurer or by the insurer's managed care
12 arrangement, whichever date is earlier, the insurer shall
13 grant or deny the request. If the insurer denies the request,
14 the insurer shall notify the injured worker in writing of his
15 or her right to file a grievance.

16 (d) Grievances must be considered in a timely manner
17 and must be transmitted to appropriate decisionmakers who have
18 the authority to fully investigate the issue and take
19 corrective action. If the insurer or the insurer's workers'
20 compensation arrangement fails to notify the injured worker of
21 the outcome of the grievance in writing within 15 days from
22 the date of receiving the grievance, the grievance shall be
23 presumed to be resolved against the injured worker and the
24 grievance procedures shall be presumed exhausted for purposes
25 of s. 440.192(3).

26 (e) If a grievance is found to be valid, corrective
27 action must be taken promptly.

28 (f) All concerned parties must be notified of the
29 results of a grievance.

30 (g) The insurer must report annually, no later than
31 March 31, to the agency regarding its grievance procedure

1 activities for the prior calendar year. The report must be in
2 a format prescribed by the agency and must contain the number
3 of grievances filed in the past year and a summary of the
4 subject, nature, and resolution of such grievances.

5 Section 9. Paragraph (a) of subsection (1) of section
6 440.14, Florida Statutes, is amended to read:

7 440.14 Determination of pay.--

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

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

29 Section 10. Paragraphs (b) and (f) of subsection (1)
30 and paragraph (a) of subsection (3) of section 440.15, Florida
31 Statutes, are amended to read:

1 440.15 Compensation for disability.--Compensation for
2 disability shall be paid to the employee, subject to the
3 limits provided in s. 440.12(2), as follows:

4 (1) PERMANENT TOTAL DISABILITY.--

5 (b) Any compensable injury eligible for permanent
6 total benefits must be of a nature and severity that prevents
7 the employee from being able to perform his or her previous
8 work. If the employee is engaged in or is capable of being
9 engaged in any substantial, gainful employment, he or she is
10 not entitled to permanent total disability. The burden is on
11 the employee to establish that he or she is unable to perform
12 work if such work is available within a 50-mile radius of the
13 employee's residence. In addition, ~~Only~~ a catastrophic injury
14 as defined in s. 440.02 shall, in the absence of conclusive
15 proof of a substantial earning capacity, constitute permanent
16 total disability. ~~Only claimants with catastrophic injuries~~
17 are eligible for permanent total benefits.In no other case
18 may permanent total disability be awarded.

19 (f)1. If permanent total disability results from
20 injuries that occurred subsequent to June 30, 1955, and for
21 which the liability of the employer for compensation has not
22 been discharged under s. 440.20(11), the injured employee
23 shall receive additional weekly compensation benefits equal to
24 5 percent of her or his weekly compensation rate, as
25 established pursuant to the law in effect on the date of her
26 or his injury, multiplied by the number of calendar years
27 since the date of injury. The weekly compensation payable and
28 the additional benefits payable under this paragraph, when
29 combined, may not exceed the maximum weekly compensation rate
30 in effect at the time of payment as determined pursuant to s.
31 440.12(2). Entitlement to these supplemental payments shall

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

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

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

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

6 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

7 (a) Impairment benefits.--

8 1. Once the employee has reached the date of maximum
9 medical improvement, impairment benefits are due and payable
10 within 20 days after the carrier has knowledge of the
11 impairment.

12 2. The three-member panel, in cooperation with the
13 division, shall establish and use a uniform permanent
14 impairment rating schedule. This schedule must be based on
15 medically or scientifically demonstrable findings as well as
16 the systems and criteria set forth in the American Medical
17 Association's Guides to the Evaluation of Permanent
18 Impairment; the Snellen Charts, published by American Medical
19 Association Committee for Eye Injuries; and the Minnesota
20 Department of Labor and Industry Disability Schedules. The
21 schedule should be based upon objective findings. The schedule
22 shall be more comprehensive than the AMA Guides to the
23 Evaluation of Permanent Impairment and shall expand the areas
24 already addressed and address additional areas not currently
25 contained in the guides. On August 1, 1979, and pending the
26 adoption, by rule, of a permanent schedule, Guides to the
27 Evaluation of Permanent Impairment, copyright 1977, 1971,
28 1988, by the American Medical Association, shall be the
29 temporary schedule and shall be used for the purposes hereof.
30 For injuries after July 1, 1990, pending the adoption by
31 division rule of a uniform disability rating schedule, the

1 Minnesota Department of Labor and Industry Disability Schedule
2 shall be used unless that schedule does not address an injury.
3 In such case, the Guides to the Evaluation of Permanent
4 Impairment by the American Medical Association shall be used.
5 Determination of permanent impairment under this schedule must
6 be made by a physician licensed under chapter 458, a doctor of
7 osteopathic medicine licensed under chapters 458 and 459, a
8 chiropractic physician licensed under chapter 460, a podiatric
9 physician licensed under chapter 461, an optometrist licensed
10 under chapter 463, or a dentist licensed under chapter 466, as
11 appropriate considering the nature of the injury. No other
12 persons are authorized to render opinions regarding the
13 existence of or the extent of permanent impairment.

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

- 24 a. The expiration of a period computed at the rate of
25 3 weeks for each percentage point of impairment; or
26 b. The death of the employee.

27 4. After the employee has been certified by a doctor
28 as having reached maximum medical improvement or 6 weeks
29 before the expiration of temporary benefits, whichever occurs
30 earlier, the certifying doctor shall evaluate the condition of
31 the employee and assign an impairment rating, using the

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

19 5. The carrier shall pay the employee impairment
20 income benefits for a period based on the impairment rating.

21 6. The division may by rule specify forms and
22 procedures governing the method of payment of wage loss and
23 impairment benefits for dates of accidents before January 1,
24 1994, and for dates of accidents on or after January 1, 1994.

25 Section 11. Subsection (2) of section 440.185, Florida
26 Statutes, is amended to read:

27 440.185 Notice of injury or death; reports; penalties
28 for violations.--

29 (2) Within 7 days after actual knowledge of injury or
30 death, the employer shall report such injury or death to its
31 carrier, in a format prescribed by the division, and shall

1 provide a copy of such report to the employee or the
2 employee's estate. The report of injury shall contain the
3 following information:

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

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

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

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

10 (e) A record of the employee's earnings for the 13
11 weeks before the date of injury; and

12 (f)~~(e)~~ Such other information as the division may
13 require by rule.

14

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

26 Section 12. Section 440.191, Florida Statutes, is
27 amended to read:

28 440.191 Employee Assistance and Ombudsman Office.--

29 (1)~~(a)~~ In order to effect the self-executing features
30 of the Workers' Compensation Law, this chapter shall be
31 construed to permit injured employees and employers or the

1 employer's carrier to resolve disagreements without undue
2 expense, costly litigation, or delay in the provisions of
3 benefits. It is the duty of all who participate in the
4 workers' compensation system, including, but not limited to,
5 carriers, service providers, health care providers,
6 managed-care arrangements, attorneys, employers, and
7 employees, to attempt to resolve disagreements in good faith
8 and to cooperate with the division's efforts to resolve
9 disagreements between the parties. The division may by rule
10 prescribe definitions that are necessary for the effective
11 administration of this section.

12 ~~(2)(b)~~ An Employee Assistance and Ombudsman Office is
13 created within the Division of Workers' Compensation to inform
14 and assist injured workers, employers, carriers, managed-care
15 arrangements, and health care providers in fulfilling their
16 responsibilities under this chapter. ~~The division may by rule~~
17 ~~specify forms and procedures for administering requests for~~
18 ~~assistance provided by this section.~~

19 ~~(3)(c)~~ The Employee Assistance and Ombudsman Office,
20 ~~Division of Workers' Compensation~~, shall be a resource
21 available to all employees who participate in the workers'
22 compensation system and shall take all steps necessary to
23 educate and disseminate information to employees and
24 employers. Upon receiving a notice of injury or death, the
25 Employee Assistance and Ombudsman Office may initiate contact
26 with the injured employee or the injured employee's
27 representative to discuss rights and responsibilities of the
28 employee under this chapter and the services available through
29 the Employee Assistance and Ombudsman Office.

30 ~~(2)(a)~~ An employee may not file a petition requesting
31 any benefit under this chapter unless the employee has

1 ~~exhausted the procedures for informal dispute resolution under~~
2 ~~this section.~~

3 ~~(b) If at any time the employer or its carrier fails~~
4 ~~to provide benefits to which the employee believes she or he~~
5 ~~is entitled, the employee shall contact the office to request~~
6 ~~assistance in resolving the dispute. The office shall~~
7 ~~investigate the dispute and shall attempt to facilitate an~~
8 ~~agreement between the employee and the employer or carrier.~~
9 ~~The employee, the employer, and the carrier shall cooperate~~
10 ~~with the office and shall timely provide the office with any~~
11 ~~documents or other information that it may require in~~
12 ~~connection with its efforts under this section.~~

13 ~~(c) The office may compel parties to attend~~
14 ~~conferences in person or by telephone in an attempt to resolve~~
15 ~~disputes quickly and in the most efficient manner possible.~~
16 ~~Settlement agreements resulting from such conferences must be~~
17 ~~submitted to the Office of the Judges of Compensation Claims~~
18 ~~for approval.~~

19 ~~(d) The Employee Assistance and Ombudsman Office may~~
20 ~~assign an ombudsman to assist the employee in resolving the~~
21 ~~dispute. If the dispute is not resolved within 30 days after~~
22 ~~the employee contacts the office, the ombudsman shall, at the~~
23 ~~employee's request, assist the employee in drafting a petition~~
24 ~~for benefits and explain the procedures for filing petitions.~~
25 ~~The division may by rule determine the method used to~~
26 ~~calculate the 30-day period. The Employee Assistance and~~
27 ~~Ombudsman Office may not represent employees before the judges~~
28 ~~of compensation claims. An employer or carrier may not pay any~~
29 ~~attorneys' fees on behalf of the employee for services~~
30 ~~rendered or costs incurred in connection with this section,~~
31 ~~unless expressly authorized elsewhere in this chapter.~~

1 Section 13. Section 440.192, Florida Statutes, is
2 amended to read:

3 440.192 Procedure for resolving benefit disputes.--

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

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

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

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

31

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

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

7 (e) The time period for which compensation was not
8 timely provided and the specific classification of the
9 compensation.

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

13 (g) The specific ~~All~~ travel costs to which the
14 employee believes she or he is entitled, including dates of
15 travel and purpose of travel, means of transportation, and
16 mileage, including the date the request for mileage was filed
17 with the carrier, and a copy of the request for mileage filed
18 with the carrier.

19 (h) Specific listing of all medical charges alleged
20 unpaid, including the name and address of the medical
21 provider, the amounts due, and the specific dates of
22 treatment.

23 (i) The type or nature of treatment care or attendance
24 sought and the justification for such treatment. If the
25 employee is under the care of a physician for the injury
26 identified in paragraph (c), a copy of the physician's
27 request, authorization, or recommendation for treatment, care,
28 or attendant care must accompany the petition.

29 (j) Specific explanation of any other disputed issue
30 that a judge of compensation claims will be called to rule
31 upon.

1 (k) Any other information and documentation the Deputy
2 Chief Judge may require by rule.

3 (3) A petition for benefits may contain a claim for
4 past benefits and continuing benefits in any benefit category,
5 but is limited to those in default and ripe, due, and owing on
6 the date the petition is filed. If the employer has elected to
7 satisfy its obligation to provide medical treatment, care, and
8 attendance through a managed care arrangement designated under
9 this chapter, the employee must exhaust all managed care
10 grievance procedures before filing a petition for benefits
11 under this section.

12 (4) The dismissal of any petition or portion of the
13 petition under this section is without prejudice and does not
14 require a hearing.

15 (5)~~(4)~~ The petition must include a certification by
16 the claimant or, if the claimant is represented by counsel,
17 the claimant's attorney, stating that the claimant, or
18 attorney if the claimant is represented by counsel, has made a
19 good faith effort to resolve the dispute and that the claimant
20 or attorney was unable to resolve the dispute with the
21 carrier.

22 (6)~~(5)~~ All motions to dismiss must state with
23 particularity the basis for the motion. The judge of
24 compensation claims shall enter an order upon such motions
25 without hearing, unless good cause for hearing is shown. When
26 any petition or portion of a petition is dismissed for lack of
27 specificity under this subsection, the claimant must be
28 allowed 20 days after the date of the order of dismissal in
29 which to file an amended petition. Any grounds for dismissal
30 for lack of specificity under this section not asserted within
31

1 60 ~~30~~ days after receipt of the petition for benefits are
2 thereby waived.

3 (7)~~(6)~~ If the claimant is not represented by counsel,
4 the Office of the Judges of Compensation Claims may request
5 the Employee Assistance and Ombudsman Office to assist the
6 claimant in filing a petition that meets the requirements of
7 this section.

8 (8)~~(7)~~ Notwithstanding the provisions of s. 440.34, a
9 judge of compensation claims may not award attorney's fees
10 payable by the carrier for services expended or costs incurred
11 prior to the filing of a petition ~~that does not meeting meet~~
12 the requirements of this section.

13 (9)~~(8)~~ Within 30 ~~14~~ days after receipt of a petition
14 for benefits by certified mail, the carrier must either pay
15 the requested benefits without prejudice to its right to deny
16 within 120 days from receipt of the petition or file a
17 response to the petition ~~notice of denial~~ with the Office of
18 the Judges of Compensation Claims ~~division~~. The carrier must
19 list all benefits requested but not paid and explain its
20 justification for nonpayment in the response to the petition
21 ~~notice of denial~~. A carrier that does not deny compensability
22 in accordance with s. 440.20(4) is deemed to have accepted the
23 employee's injuries as compensable, unless it can establish
24 material facts relevant to the issue of compensability that
25 could not have been discovered through reasonable
26 investigation within the 120-day period. The carrier shall
27 provide copies of the response ~~notice~~ to the filing party,
28 employer, and claimant by certified mail.

29 Section 14. Subsection (11) of section 440.20, Florida
30 Statutes, is amended to read:

31

1 440.20 Time for payment of compensation; penalties for
2 late payment.--
3 (11)(a) When a claimant is not represented by counsel,
4 upon joint petition of all interested parties, a lump-sum
5 payment in exchange for the employer's or carrier's release
6 from liability for future medical expenses, as well as future
7 payments of compensation expenses and any other benefits
8 provided under this chapter, shall be allowed at any time in
9 any case in which the employer or carrier has filed a written
10 notice of denial within 120 days after the employer receives
11 notice date of the injury, and the judge of compensation
12 claims at a hearing to consider the settlement proposal finds
13 a justiciable controversy as to legal or medical
14 compensability of the claimed injury or the alleged accident.
15 The employer or carrier may not pay any attorney's fees on
16 behalf of the claimant for any settlement under this section
17 unless expressly authorized elsewhere in this chapter. Upon
18 the joint petition of all interested parties and after giving
19 due consideration to the interests of all interested parties,
20 the judge of compensation claims may enter a compensation
21 order approving and authorizing the discharge of the liability
22 of the employer for compensation and remedial treatment, care,
23 and attendance, as well as rehabilitation expenses, by the
24 payment of a lump sum. The judge of compensation claims shall
25 not approve settlement proposals, including any stipulations
26 or agreements between the parties or between a claimant and
27 his or her attorney related to a settlement, which provide for
28 an attorney's fee in excess of the amount permitted in s.
29 440.34. Such a compensation order so entered upon joint
30 petition of all interested parties is not subject to
31 modification or review under s. 440.28. If the settlement

1 proposal together with supporting evidence is not approved by
2 the judge of compensation claims, it shall be considered void.
3 Upon approval of a lump-sum settlement under this subsection,
4 the judge of compensation claims shall send a report to the
5 Chief Judge of the amount of the settlement and a statement of
6 the nature of the controversy. The Chief Judge shall keep a
7 record of all such reports filed by each judge of compensation
8 claims and shall submit to the Legislature a summary of all
9 such reports filed under this subsection annually by September
10 15.

11 (b) When a claimant is not represented by counsel,
12 upon joint petition of all interested parties, a lump-sum
13 payment in exchange for the employer's or carrier's release
14 from liability for future medical expenses, as well as future
15 payments of compensation and rehabilitation expenses, and any
16 other benefits provided under this chapter, may be allowed at
17 any time in any case after the injured employee has attained
18 maximum medical improvement. An employer or carrier may not
19 pay any attorney's fees on behalf of the claimant for any
20 settlement, unless expressly authorized elsewhere in this
21 chapter. The judge of compensation claims shall not approve
22 settlement proposals, including any stipulations or agreements
23 between the parties or between a claimant and his or her
24 attorney related to the settlement proposal, which provide for
25 an attorney's fee in excess of the amount permitted in s.
26 440.34. A compensation order so entered upon joint petition of
27 all interested parties shall not be subject to modification or
28 review under s. 440.28. However, a judge of compensation
29 claims is not required to approve any award for lump-sum
30 payment when it is determined by the judge of compensation
31 claims that the payment being made is in excess of the value

1 of benefits the claimant would be entitled to under this
2 chapter. The judge of compensation claims shall make or cause
3 to be made such investigations as she or he considers
4 necessary, in each case in which the parties have stipulated
5 that a proposed final settlement of liability of the employer
6 for compensation shall not be subject to modification or
7 review under s. 440.28, to determine whether such final
8 disposition will definitely aid the rehabilitation of the
9 injured worker or otherwise is clearly for the best interests
10 of the person entitled to compensation and, in her or his
11 discretion, may have an investigation made by the
12 Rehabilitation Section of the Division of Workers'
13 Compensation. The joint petition and the report of any
14 investigation so made will be deemed a part of the proceeding.
15 An employer shall have the right to appear at any hearing
16 pursuant to this subsection which relates to the discharge of
17 such employer's liability and to present testimony at such
18 hearing. The carrier shall provide reasonable notice to the
19 employer of the time and date of any such hearing and inform
20 the employer of her or his rights to appear and testify. ~~When~~
21 ~~the claimant is represented by counsel or when the claimant~~
22 ~~and carrier or employer are represented by counsel, final~~
23 ~~approval of the lump-sum settlement agreement, as provided for~~
24 ~~in a joint petition and stipulation, shall be approved by~~
25 ~~entry of an order within 7 days after the filing of such joint~~
26 ~~petition and stipulation without a hearing, unless the judge~~
27 ~~of compensation claims determines, in her or his discretion,~~
28 ~~that additional testimony is needed before such settlement can~~
29 ~~be approved or disapproved and so notifies the parties.~~The
30 probability of the death of the injured employee or other
31 person entitled to compensation before the expiration of the

1 period during which such person is entitled to compensation
2 shall, in the absence of special circumstances making such
3 course improper, be determined in accordance with the most
4 recent United States Life Tables published by the National
5 Office of Vital Statistics of the United States Department of
6 Health and Human Services. The probability of the happening of
7 any other contingency affecting the amount or duration of the
8 compensation, except the possibility of the remarriage of a
9 surviving spouse, shall be disregarded. As a condition of
10 approving a lump-sum payment to a surviving spouse, the judge
11 of compensation claims, in the judge of compensation claims'
12 discretion, may require security which will ensure that, in
13 the event of the remarriage of such surviving spouse, any
14 unaccrued future payments so paid may be recovered or recouped
15 by the employer or carrier. Such applications shall be
16 considered and determined in accordance with s. 440.25.

17 (c) Notwithstanding s. 440.21(2), when a claimant is
18 represented by counsel, the claimant may waive all rights to
19 all benefits under this chapter by entering into a settlement
20 agreement releasing the employer and the carrier from
21 liability for workers' compensation benefits in exchange for a
22 lump-sum payment to the claimant. The settlement agreement
23 requires approval by the judge of compensation claims only as
24 to the attorney's fees paid to the claimant's attorney by the
25 claimant. The parties need not submit any information or
26 documentation in support of the settlement, except as needed
27 to justify the amount of the attorney's fees. Neither the
28 employer nor the carrier is responsible for any attorney's
29 fees relating to the settlement and release of claims under
30 this section. Payment of the lump-sum settlement amount must
31 be made within 14 days after the date the judge of

1 compensation claims mails the order approving the attorney's
2 fees. Any order entered by a judge of compensation claims
3 approving the attorney's fees as set out in the settlement
4 under this subsection is not considered to be an award and is
5 not subject to modification or review. The judge of
6 compensation claims shall report these settlements to the
7 chief judge in accordance with the requirements set forth in
8 s. 440.11(a) and (b). Settlements entered into under this
9 subsection are valid and apply to all dates of accident.

10 (d) With respect to any lump-sum settlement under this
11 subsection, a judge of compensation claims must consider
12 whether the settlement provides for appropriate recovery of
13 any child-support arrearage. Neither the employer nor the
14 carrier has a duty to investigate or collect information
15 regarding child-support arrearages.

16 (e)(c) This section applies to all claims that the
17 parties have not previously settled, regardless of the date of
18 accident.

19 Section 15. Subsections (1), (2), (3), and (4) of
20 section 440.25, Florida Statutes, are amended to read:

21 440.25 Procedures for mediation and hearings.--

22 (1) Within 90 ~~21~~ days after a petition for benefits is
23 filed under s. 440.192, a mediation conference concerning such
24 petition shall be held. Within 40 ~~7~~ days after such petition
25 is filed, the judge of compensation claims shall notify the
26 interested parties by order that a mediation conference
27 concerning such petition will be held unless the parties have
28 notified the Office of the Judges of Compensation Claims that
29 a mediation has been held. Such order must ~~notice shall~~ give
30 the date by which, time, and location of the mediation
31 conference must be held. Such order ~~notice~~ may be served

1 personally upon the interested parties or may be sent to the
2 interested parties by mail. Continuances may be granted only
3 if the requesting party demonstrates to the judge of
4 compensation claims that the reason for requesting the
5 continuance arises from circumstances beyond the party's
6 control. Any order granting a continuance must set forth the
7 date of the rescheduled mediation conference. A mediation
8 conference may not be used solely for the purpose of mediating
9 attorney's fees.

10 (2) Any party who participates in a mediation
11 conference shall not be precluded from requesting a hearing
12 following the mediation conference should both parties not
13 agree to be bound by the results of the mediation conference.
14 A mediation conference is required to be held unless this
15 requirement is waived by the Chief Judge. No later than 3 days
16 prior to the mediation conference, all parties must submit any
17 applicable motions, including, but not limited to, a motion to
18 waive the mediation conference, to the judge of compensation
19 claims.

20 (3)(a) Such mediation conference shall be conducted
21 informally and shall ~~does~~ not require the use of formal rules
22 of evidence or procedure. Any information from the files,
23 reports, case summaries, mediator's notes, or other
24 communications or materials, oral or written, relating to a
25 mediation conference under this section obtained by any person
26 performing mediation duties is privileged and confidential and
27 may not be disclosed without the written consent of all
28 parties to the conference. Any research or evaluation effort
29 directed at assessing the mediation program activities or
30 performance must protect the confidentiality of such
31 information. Each party to a mediation conference has a

1 privilege during and after the conference to refuse to
2 disclose and to prevent another from disclosing communications
3 made during the conference whether or not the contested issues
4 are successfully resolved. This subsection and paragraphs
5 (4)(a) and (b) shall not be construed to prevent or inhibit
6 the discovery or admissibility of any information that is
7 otherwise subject to discovery or that is admissible under
8 applicable law or rule of procedure, except that any conduct
9 or statements made during a mediation conference or in
10 negotiations concerning the conference are inadmissible in any
11 proceeding under this chapter.

12 (b)1. Unless the parties conduct a private mediation
13 under subparagraph 2., mediation shall be conducted by a
14 mediator selected by the Deputy Chief Judge from among
15 mediators ~~The Chief Judge shall select a mediator. The~~
16 ~~mediator shall be~~ employed on a full-time basis by the Office
17 of the Judges of Compensation Claims. A mediator must be a
18 member of The Florida Bar for at least 5 years and must
19 complete a mediation training program approved by the Chief
20 Judge. Adjunct mediators may be employed by the Office of the
21 Judges of Compensation Claims on an as-needed basis and shall
22 be selected from a list prepared by the Chief Judge. An
23 adjunct mediator must be independent of all parties
24 participating in the mediation conference. An adjunct mediator
25 must be a member of The Florida Bar for at least 5 years and
26 must complete a mediation training program approved by the
27 Chief Judge. An adjunct mediator shall have access to the
28 office, equipment, and supplies of the judge of compensation
29 claims in each district.

30 2. In the event the parties agree or in the event no
31 mediators under subparagraph 1. are available to conduct the

1 required mediation within the period specified in this
2 section, the parties shall hold a mediation conference at the
3 carrier's expense within the 90-day period set for mediation.
4 The mediation conference shall be conducted by a mediator who
5 is a member in good standing of The Florida Bar with at least
6 5 years' of Florida practice and is certified under s. 44.106.
7 If the parties do not agree upon a mediator within 10 days
8 after the date of the order, the claimant shall notify the
9 judge in writing and the judge shall appoint a mediator under
10 this subparagraph within 7 days.In the event both parties
11 agree, the results of the mediation conference shall be
12 binding and neither party shall have a right to appeal the
13 results. In the event either party refuses to agree to the
14 results of the mediation conference, the results of the
15 mediation conference as well as the testimony, witnesses, and
16 evidence presented at the conference shall not be admissible
17 at any subsequent proceeding on the claim. The mediator shall
18 not be called in to testify or give deposition to resolve any
19 claim for any hearing before the judge of compensation claims.
20 The employer may be represented by an attorney at the
21 mediation conference if the employee is also represented by an
22 attorney at the mediation conference.

23 (c) The parties shall make a good-faith effort to
24 complete the pretrial stipulations before the conclusion of
25 the mediation conference if the claims, except for attorney's
26 fees and costs, have not been settled and if any claims in any
27 filed petition remain unresolved. The judge of compensation
28 claims may sanction a party or both parties for failure to
29 complete the pretrial stipulations before the conclusion of
30 the mediation conference.

31

1 (4)(a) If the parties fail to submit written pretrial
2 stipulations at the mediation conference, on the 10th day
3 ~~following commencement of mediation, the questions in dispute~~
4 ~~have not been resolved,~~the judge of compensation claims shall
5 order a pretrial hearing to occur within 14 days after the
6 date of mediation ordered by the judge of compensation claims
7 ~~hold a pretrial hearing.~~ The judge of compensation claims
8 shall give the interested parties at least 7 days' advance
9 notice of the pretrial hearing by mail. At the pretrial
10 hearing, the judge of compensation claims shall, subject to
11 paragraph (b), set a date for the final hearing that allows
12 the parties at least 30 days to conduct discovery unless the
13 parties consent to an earlier hearing date.

14 (b) The final hearing must be held and concluded
15 within 90 ~~45~~ days after the mediation conference is held
16 ~~pretrial hearing.~~ Continuances may be granted only if the
17 requesting party demonstrates to the judge of compensation
18 claims that the reason for requesting the continuance arises
19 from circumstances beyond the party's control. The written
20 consent of the claimant must be obtained before any request is
21 granted for an additional continuance after the initial
22 continuance is granted. Any order granting a continuance must
23 set forth the date and time of the rescheduled hearing.
24 Continuances may be granted only if the requesting party
25 demonstrates to the judge of compensation claims that the
26 reason for requesting the continuances arises from
27 circumstances beyond the party's control. If a judge of
28 compensation claims grants two or more continuances to a
29 requesting party, the judge of compensation claims shall
30 report such continuances to the Deputy Chief Judge.

31

1 (c) The judge of compensation claims shall give the
2 interested parties at least 7 days' advance notice of the
3 final hearing, served upon the interested parties by mail.

4 (d) The final hearing shall be held within 210 days
5 after receipt of the petition for benefits in the county where
6 the injury occurred, if the injury occurred in this state,
7 unless otherwise agreed to between the parties and authorized
8 by the judge of compensation claims in the county where the
9 injury occurred. If the injury occurred outside ~~without~~ the
10 state and is one for which compensation is payable under this
11 chapter, then the final hearing ~~above referred to~~ may be held
12 in the county of the employer's residence or place of
13 business, or in any other county of the state that ~~which~~ will,
14 in the discretion of the Chief Judge, be the most convenient
15 for a hearing. The final hearing shall be conducted by a judge
16 of compensation claims, who shall, within 30 ~~14~~ days after
17 final hearing or closure of the hearing record, unless
18 otherwise agreed by the parties, enter a final order on the
19 merits of the disputed issues ~~determine the dispute in a~~
20 ~~summary manner~~. The judge of compensation claims may enter an
21 abbreviated final order in cases when compensability is not
22 disputed. Either party may request separate findings of fact
23 and conclusions of law. At the final ~~such~~ hearing, the
24 claimant and employer may each present evidence in respect of
25 the claims presented by the petition for benefits ~~such claim~~
26 and may be represented by any attorney authorized in writing
27 for such purpose. When there is a conflict in the medical
28 evidence submitted at the hearing, the provisions of s. 440.13
29 shall apply. The report or testimony of the expert medical
30 advisor shall be made a part of the record of the proceeding
31 and shall be given the same consideration by the judge of

1 compensation claims as is accorded other medical evidence
2 submitted in the proceeding; and all costs incurred in
3 connection with such examination and testimony may be assessed
4 as costs in the proceeding, subject to the provisions of s.
5 440.13. No judge of compensation claims may make a finding of
6 a degree of permanent impairment that is greater than the
7 greatest permanent impairment rating given the claimant by any
8 examining or treating physician, except upon stipulation of
9 the parties.

10 (e) The order making an award or rejecting the claim,
11 referred to in this chapter as a "compensation order," shall
12 set forth the findings of ultimate facts and the mandate; and
13 the order need not include any other reason or justification
14 for such mandate. The compensation order shall be filed in the
15 office of the division at Tallahassee. A copy of such
16 compensation order shall be sent by mail to the parties and
17 attorneys of record at the last known address of each, with
18 the date of mailing noted thereon.

19 (f) Each judge of compensation claims is required to
20 submit a special report to the Chief Judge in each contested
21 workers' compensation case in which the case is not determined
22 within 14 days of final hearing. Said form shall be provided
23 by the Chief Judge and shall contain the names of the judge of
24 compensation claims and of the attorneys involved and a brief
25 explanation by the judge of compensation claims as to the
26 reason for such a delay in issuing a final order. The Chief
27 Judge shall compile these special reports into an annual
28 public report to the Governor, the Secretary of Labor and
29 Employment Security, the Legislature, The Florida Bar, and the
30 appellate district judicial nominating commissions.

31

1 ~~(g) Judges of compensation claims shall adopt and~~
2 ~~enforce uniform local rules for workers' compensation.~~

3 (g)(h) Notwithstanding any other provision of this
4 section, the judge of compensation claims may require the
5 appearance of the parties and counsel before her or him
6 without written notice for an emergency conference where there
7 is a bona fide emergency involving the health, safety, or
8 welfare of an employee. An emergency conference under this
9 section may result in the entry of an order or the rendering
10 of an adjudication by the judge of compensation claims.

11 (h)(i) To expedite dispute resolution and to enhance
12 the self-executing features of the Workers' Compensation Law,
13 the Chief Judge shall make provision by rule or order for the
14 resolution of appropriate motions by judges of compensation
15 claims without oral hearing upon submission of brief written
16 statements in support and opposition, and for expedited
17 discovery and docketing. Unless the judge of compensation
18 claims orders a hearing under paragraph (i), claims related to
19 the determination of pay under s. 440.14 shall be resolved
20 under this paragraph.

21 (i)(j) To further expedite dispute resolution and to
22 enhance the self-executing features of the system, those
23 petitions filed in accordance with s. 440.192 that involve a
24 claim for benefits of \$5,000 or less shall, in the absence of
25 compelling evidence to the contrary, be presumed to be
26 appropriate for expedited resolution under this paragraph; and
27 any other claim filed in accordance with s. 440.192, upon the
28 written agreement of both parties and application by either
29 party, may similarly be resolved under this paragraph. Claims
30 for medical-only benefits of \$5,000, or less, or medical
31 mileage reimbursement shall, in the absence of compelling

1 evidence to the contrary, be resolved through the expedited
2 dispute resolution process under this paragraph.For purposes
3 of expedited resolution pursuant to this paragraph, the Chief
4 Judge shall make provision by rule or order for expedited and
5 limited discovery and expedited docketing in such cases. At
6 least 15 days prior to hearing, the parties shall exchange and
7 file with the judge of compensation claims a pretrial outline
8 of all issues, defenses, and witnesses on a form promulgated
9 by the Chief Judge; provided, in no event shall such hearing
10 be held without 15 days' written notice to all parties. No
11 pretrial hearing shall be held. The judge of compensation
12 claims shall limit all argument and presentation of evidence
13 at the hearing to a maximum of 30 minutes, and such hearings
14 shall not exceed 30 minutes in length. Neither party shall be
15 required to be represented by counsel. The employer or carrier
16 may be represented by an adjuster or other qualified
17 representative. The employer or carrier and any witness may
18 appear at such hearing by telephone. The rules of evidence
19 shall be liberally construed in favor of allowing introduction
20 of evidence.

21 (j) A judge of compensation claims, either upon the
22 motion of a party or its own motion, may dismiss a petition
23 for lack of prosecution if no petitions, responses, motions,
24 orders, requests for hearings, or notices of deposition have
25 been filed for a period of 12 months, unless good cause is
26 shown. Dismissals for lack of prosecution are without
27 prejudice and do not require a hearing.

28 (k) A judge of compensation claims may not award
29 interest on unpaid medical bills, nor may the amount of such
30 bills be used to calculate the amount of interest awarded.

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1 Regardless of the date benefits were initially requested,
2 attorney's fees do not attach under this subsection until 30
3 days from the date the carrier or employer, if self-insured,
4 receives the petition.

5 Section 16. Subsection (4) of section 440.29, Florida
6 Statutes, is amended to read:

7 440.29 Procedure before the judge of compensation
8 claims.--

9 (4) All medical reports of authorized treating health
10 care providers or independent medical examiners whose medical
11 opinion is submitted under s. 440.13(5)(e)relating to the
12 claimant and subject accident shall be received into evidence
13 by the judge of compensation claims upon proper motion.

14 However, such records must be served on the opposing party at
15 least 30 days before the final hearing. This section does not
16 limit any right of further discovery, including, but not
17 limited to, depositions.

18 Section 17. Subsections (1) and (3) of section 440.34,
19 Florida Statutes, are amended to read:

20 440.34 Attorney's fees; costs.--

21 (1) A fee, gratuity, or other consideration may not be
22 paid for services rendered for a claimant in connection with
23 any proceedings arising under this chapter, unless approved as
24 reasonable by the judge of compensation claims or court having
25 jurisdiction over such proceedings. Except as provided by this
26 subsection, any attorney's fee approved by a judge of
27 compensation claims for services rendered to a claimant must
28 equal to 25 ~~20~~ percent of the first \$5,000 of the amount of
29 the benefits secured, 20 ~~15~~ percent of the next \$5,000 of the
30 amount of the benefits secured, 15 ~~10~~ percent of the remaining
31 amount of the benefits secured to be provided during the first

1 10 years after the date the claim is filed, and 10 5 percent
2 of the benefits secured after 10 years.

3 (a) However, the judge of compensation claims shall
4 consider the following factors in each case and may approve an
5 increase or decrease the attorney's fee of up to \$2,500, based
6 on a reasonable hourly rate, except in those cases set forth
7 in s. 440.34(3)(c), if, in her or his judgment, the judge of
8 compensation claims expressly finds that the attorney's fees
9 based on benefits secured fails to fairly compensate the
10 attorney and that the circumstances of the particular case
11 warrant such action. Such fees shall be allowed for any
12 petition for benefits that were ripe, due, and owing and
13 should have been raised in such petition under this paragraph.
14 Any fees are waived on any other benefits which were not
15 raised and which were ripe, due, and owing at the time the
16 issues are resolved.

17 (b) The judge of compensation claims shall not approve
18 a compensation order, a joint stipulation for lump-sum
19 settlement, a stipulation or agreement between a claimant and
20 his or her attorney, or any other agreement related to
21 benefits under this chapter which provides for an attorney's
22 fee in excess of the amount permitted by this section.+

23 ~~(a) The time and labor required, the novelty and~~
24 ~~difficulty of the questions involved, and the skill requisite~~
25 ~~to perform the legal service properly.~~

26 ~~(b) The fee customarily charged in the locality for~~
27 ~~similar legal services.~~

28 ~~(c) The amount involved in the controversy and the~~
29 ~~benefits resulting to the claimant.~~

30 ~~(d) The time limitation imposed by the claimant or the~~
31 ~~circumstances.~~

1 ~~(e) The experience, reputation, and ability of the~~
2 ~~lawyer or lawyers performing services.~~

3 ~~(f) The contingency or certainty of a fee.~~

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

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

17 (b) In any case in which the employer or carrier files
18 a response to petition denying benefits ~~notice of denial~~ with
19 the office of the Judges of Compensation Claims division and
20 the injured person has employed an attorney in the successful
21 prosecution of the petition claim; or

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

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

28
29 Regardless of the date benefits were initially requested,
30 attorney's fees may not attach under this subsection until 30
31

1 days from the date the carrier or employer, if self-insured,
2 receives the petition and denies benefits.

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

10 Section 18. Section 440.345, Florida Statutes, is
11 amended to read:

12 440.345 Reporting of attorney's fees.--All fees paid
13 to attorneys for services rendered under this chapter shall be
14 reported to the Office of the Judges of Compensation Claims
15 division as the Office of the Judges of Compensation Claims
16 division requires by rule. The Office of the Judges of
17 Compensation Claims division shall annually summarize such
18 data in a report to the President of the Senate, the Speaker
19 of the House of Representatives, and the Governor ~~Workers'~~
20 ~~Compensation Oversight Board.~~

21 Section 19. Subsection (8) is added to section 440.39,
22 Florida Statutes, to read:

23 440.39 Compensation for injuries when third persons
24 are liable.--

25 (8) This section does not impose on the carrier a duty
26 to preserve evidence pertaining to the industrial accident or
27 to injuries arising therefrom.

28 Section 20. Subsection (4) is added to section
29 627.412, Florida Statutes, to read:

30 627.412 Standard provisions, in general.--

31

1 (4) Notwithstanding any other law, a public entity or
2 agency may purchase a consolidated insurance program for the
3 purpose of providing coverage for workers' compensation,
4 employer's liability, general liability, builder's risk, or
5 pollution liability to the public entity or agency or to a
6 contractor or subcontractor for a public construction project.

7 Section 21. The Department of Insurance shall conduct
8 a study and submit a report to the President of the Senate and
9 the Speaker of the House of Representatives on November 1,
10 2001, addressing the following issues:

11 (1) The extent to which health insurance policies and
12 health maintenance organization contracts issued to employers
13 in this state provide coverage for workplace injuries if such
14 injuries are not covered by workers' compensation;

15 (2) The extent to which the coverage described in
16 subsection (1) is affected by whether the injured employee is
17 required by law to be covered but is not, or whether the
18 employee is lawfully exempt from coverage;

19 (3) The extent to which the coverage described in
20 subsections (1) and (2) varies among small employers and large
21 employers, respectively; and

22 (4) The cost impact on group health insurance policies
23 and group health maintenance organization contracts
24 attributable to covering workplace injuries that are not
25 covered by workers' compensation, as currently provided and
26 under such other options as may be considered by the
27 department.

28 Section 22. Section 440.4416 and subsection (3) of
29 section 440.45, Florida Statutes, are repealed.

30 Section 23. If any provision of this act or its
31 application to any person or circumstance is held invalid, the

1 invalidity does not affect other provisions or applications of
2 the act which can be given effect without the invalid
3 provision or application, and to this end the provisions of
4 this act are declared severable.

5 Section 24. This act shall take effect January 1,
6 2002.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1188

4 The committee substitute provides the following changes:

5 Benefits

- 6 1. Removes the Social Security standard for
7 eligibility for permanent total disability
8 benefits from the definition of "catastrophic
9 injury."
10
- 11 2. Revises eligibility for permanent total disability
12 claims, in all cases other than catastrophic
13 injuries, to provide that the injury eligible for
14 permanent total disability must be of a nature and
15 severity that prevents the employee from being
16 able to perform his or her previous work. If the
17 employee is engaged in or is capable of being
18 engaged in any substantial gainful employment, he
19 or she is not entitled to permanent total
20 disability. The burden would be on the employee to
21 establish that he or she is unable to perform work
22 within a 50-mile radius of the employee's
23 residence.
24
- 25 3. Allow employees to change doctors one time per
26 accident, upon written request.
- 27 4. Increases permanent partial disability impairment
28 income benefits from half the compensation rate to
29 the full compensation rate (66 2/3 of the
30 employee's average weekly wage.)
- 31 5. Allows employers and carriers to deliver medical
benefits either through a workers' compensation
managed care arrangement or outside of a workers'
compensation managed care arrangement.
6. Allows employers and carriers to negotiate medical
fees in excess of the uniform reimbursement
schedule and provides that the maximum
reimbursement allowance for inpatient and
outpatient care cannot exceed the percentage
increase in the Consumer Price Index for the prior
year, except when the three-member panel adopts a
nationally recognized reimbursement methodology.
7. Provides that family members who provide
non-professional attendant care will be paid at
the rate of their regular employment, not to
exceed the value of that care in the community.
8. Requires the carrier to pay for the claimant's
first independent medical examination per accident
but permits each party to introduce the medical
opinion of one independent medical examiner per
specialty into evidence.

- 1 9. Prohibits the payment of impairment income
2 benefits for preexisting mental, psychological, or
 emotional conditions.
- 3 Informal Dispute Resolution
- 4 1. Eliminates the request for assistance process.
- 5 2. Authorizes the division to contact the injured
6 worker or the workers' representative directly
 upon receipt of the notice of injury or death.
- 7 3. Requires that a request for medical care be filed
8 before a "grievance" may be filed with a managed
9 care arrangement and provide that the informal
10 dispute resolution process is exhausted if the
 workers' compensation managed care arrangement
 does not respond to a grievance within 30 days of
 filing.
- 11 Formal Dispute Resolution
- 12 1. Authorizes the partial dismissal of petitions for
13 benefits, without prejudice.
- 14 2. Replaces the "notice of denial" with a "response
15 to petition" for purposes of granting or denying
16 benefits requested by petition.
- 17 3. Revises the statutory dispute resolution time
18 line.
- 19 4. Authorizes the judges of compensation claims to
20 issue an abbreviated final order.
- 21 5. Authorizes the use of private mediation prior to
22 the date of mandatory mediation.
- 23 6. Resolves medical-only claims less than \$5,000 and
24 medical mileage disputes through expedited dispute
25 resolution.
- 26 7. Requires additional specificity for petitions for
27 benefits and authorizes the Deputy Chief Judge to
28 require additional specificity in petitions by
29 rule.
- 30 8. Requires judges of compensation claims to review
31 all settlement proposals, stipulations, and
 agreements between the claimant and their attorney
 for compliance with the provisions concerning
 attorney's fees.
9. Requires the judges of compensation claims, when
 reviewing lump-sum settlement agreements, to
 consider whether the settlement provides for the
 appropriate recovery of any child-support
 arrears and provides that neither the employer
 or carrier has a duty to investigate or collect
 information concerning child-support arrears.
10. Prohibits the use of mediation conference solely

- 1 for the purpose of mediating attorney fees.
- 2 11. Provides that continuance orders for final
3 hearings must set the rescheduled date by order
4 and requires the judges of compensation claims to
5 report to the Deputy Chief Judge the granting of
6 two or more continuances to a requesting party and
7 requires written consent of the claimant prior to
8 the judge of compensation claims granting an
9 additional continuation after the initial
10 continuation.
- 11 12. Increases the attorney's fee schedule to equal 25
12 percent on the first \$5,000 benefits secured, 20
13 percent on the next \$5,000 secured, 15 percent on
14 the remaining amount of benefits secured during
15 the first 10 years after the claim is filed, and
16 10 percent of the benefits secured after the first
17 10 years. The judge of compensation claims may
18 approve an additional attorney's fee of up to
19 \$2,500, based on a reasonable hourly rate, if the
20 judge of compensation claims expressly finds that
21 the attorney's fees based on the benefits secured
22 fails to fairly compensate the attorney. Such fees
23 would be allowed for any petition for benefits
24 that are ripe, due, and owing that should have
25 been raised. Any attorney fees are waived on any
26 other benefits which were not raised and which
27 were ripe, due, and owing at the time the issues
28 are resolved. The judge of compensation would be
29 prohibited from awarding attorney fees that exceed
30 the benefits secured.

31 Exemptions From Workers' Compensation Coverage.

The committee substitute eliminates the exemptions from coverage for the businesses primarily engaged in the construction industry. According to a study recently released by the University of Florida, it was estimated that \$1.3 billion in workers' compensation premiums is lost, on annual basis, due to employer premium fraud and exemptions in the construction industry.

Non-construction industry sole proprietors, partners in a partnership, and officers in a corporation could continue to elect to be exempt from coverage. Individuals would be required to maintain certain documentation and produce such documentation upon request to the Division of Workers' Compensation to substantiate such exemptions.

Other Provisions

The committee substitute also requires the Department of Insurance to conduct a study and submit a report to the Legislature on the extent to which health insurance policies and health maintenance organization contracts currently cover workplace injuries that are not covered by workers' compensation policies and the costs attributable coverage and under such options as the department may consider.

The committee substitute also authorizes a public entity or agency to purchase a consolidated insurance program for the

1 purpose of providing coverage for workers' compensation,
2 employers' liability, general liability, builders' risk, or
3 pollution liability to the public entity or agency or to a
4 contractor or subcontractor for a public construction project.
5 In addition, the committee substitute repeals the Workers'
6 Compensation Oversight Board.
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